91-480

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

VS.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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QUESTIONS PRESENTED

1. Does § 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), preempt California Civil Code § 3111, which permits fringe benefit trust funds to record and foreclose mechanics' liens to secure payment of contributions owed to the funds for work performed by fund participants on the liened property?

2. Does a state lien law, which creates a security interest in improved real property to protect the pension and health benefits of employees who worked on the property, and which is part of a larger statutory framework to protect the workers' entire wage package, "relate to" ERISA-regulated employee benefit plans in a manner which triggers the preemption clause of § 514(a) of ERISA?

3. In enacting ERISA, did Congress intend to strip employees who receive pension and health benefits from multi-employer trust funds of the protection of state lien laws, while leaving the lien rights of employees who receive fringe benefits directly from their employers undisturbed?

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Petitioner Carpenters Southern California Administrative Corporation respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California entered in this case on June 20, 1991.

I

OPINIONS BELOW

The opinion of the California Supreme Court (Appendix A, *infra*) is reported at 53 Cal.3d 1041. The first decision of the District Court of Appeal in this action (Appendix B, *infra*) is not officially reported. The order of the California Supreme Court directing the District Court of Appeal to reconsider its initial decision (Appendix C, *infra*) is not officially reported. The second opinion of the District Court of Appeal (Appendix D, *infra*) is not officially reported.

II

JURISDICTION

The opinion of the California Supreme Court was filed on June 20, 1991.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

This Petition is timely filed with this Court under the provisions of 28 U.S.C. § 2101(c).

III

STATUTORY PROVISIONS

The relevant statutory provisions are: (1) California Civil Code § 3111; (2) California Civil Code § 3110; (3) § 514(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(a); (4) § 514(c) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(c); (5) § 502(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a); (6) § 515 of the Employee Retirement Income Security Act of 1974, as subsequently amended, 29 U.S.C. § 1145.

Pertinent portions of these statutory provisions are reproduced at Appendix E, *infra*.

IV

STATEMENT OF THE CASE

A. Preliminary Statement

The California Supreme Court has erroneously held that § 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") preempts a California statute that facilitates the collection of fringe benefit contributions from delinquent employers by employee benefit trust funds. In so doing, the California Supreme Court has misapplied the law and reached a result that is flatly contrary to the language and intent of ERISA —the very federal law that supposedly preempts the statute. The result strips employee benefit trust funds of a valuable tool for

assuring that employers make fringe benefit payments on behalf of covered employees. Contrary to both federal and state policy, the decision below protects delinquent employers at the expense of innocent plan participants.

B. Nature of the Suit

This is an action instituted by the Carpenters Southern California Administrative Corporation ("CSCAC"). CSCAC is the administrator of certain multi-employer benefit trust funds ("the Carpenters Trust Funds"). The Carpenters Trust Funds provide pension, health and welfare, vacation and apprenticeship benefits to covered carpentry employees and their families. The Funds are multi-employer benefit trust funds organized pursuant to the provisions of § 302(c)(5) and (6) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186(c)(5)-(6).

The Carpenters Trust Funds are employee pension benefit plans or employee welfare benefit plans within the meaning of ERISA; *see* 29 U.S.C. §§ 1002(1) and 1002(2)(a). The Funds derive their revenues from contributions made by employers on behalf of covered carpentry employees, pursuant to the provisions of collective bargaining agreements executed by the employers and by unions affiliated with the United Brotherhood of Carpenters and Joiners of America (collectively the "Union"). Such collective bargaining agreements require that employers contribute a specified sum to each trust fund for each hour worked by covered employees.

CSCAC is a "fiduciary," as that term is defined in ERISA, 29 U.S.C. § 1002(21)(A). One of its duties as administrator of the Carpenters Trust Funds is to collect contributions from signatory employers who have failed to pay the required trust fund contributions. To ensure the continued ability of the Carpenters Trust Funds to provide benefits, CSCAC is obligated, by contract and by federal law, to use its best efforts to colect the delinquent contributions.

The present action was instituted in the Superior Court of the State of California for the County of Kern. The suit sought foreclosure of mechanics liens on property located in Kern County, which was owned and developed by respondent El

Capitan Development Company ("El Capitan"). The action was founded on the provisions of California Civil Code § 3111, which permits multi-employer trust funds to record and foreclose mechanics' liens to recover unpaid fringe benefit contributions owed to such trust funds on behalf of covered employees who perform work to improve the liened property.

Civil Code § 3111 provides:

> "For the purposes of this chapter, express trust funds established pursuant to a collective bargaining agreement to which payents are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective barganing agreement."

Under this statute, if the trust fund is not paid—i.e., if a contractor fails to make employee fringe benefit contributions for work performed on a construction project—the trust fund can record a mechanics' lien on the property and can foreclose the lien to compel payment of the debt. The mechanics' lien remedy is thus an effective menas of assuring that contractors fulfill their promise to pay fringe benefit contributions.

In the present case, CSCAC sought to recover delinquent contributions owed by a contractor whose employees performed work on a residential real estate development owned by El Capitan. The total sum claimed is $121,729.23, plus interest and costs. Though a default judgment was obtained against the contractor, efforts to directly collect contributions from the delinquent contractor failed. CSCAC therefore timely recorded mechanics' liens on the El Capitan property and sought foreclosure of the liens in the present action as a means of collecting the trust fund contributions.

C. Proceedings Below

El Capitan filed a demurrer to CSCAC's complaint, asserting that CSCAC's right to maintain the present action is preempted

by § 514(a) of ERISA, 29 U.S.C. § 1144(a), which provides, in pertinent part:

> "[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan. . ."

The trial court sustained the demurrer of El Capitan; judgment was entered by the Kern County Superior Court on August 8, 1985 and a timely appeal was filed by CSCAC.

In reliance on the opinion in *Carpenters Health & Welfare Fund v. Parnas Corp.*, (1986) 176 Cal. App.3d 1196, the Court of Appeal reversed the trial court and held that Civil Code § 3111 was not preempted by ERISA (*El Capitan I*, Appendix B, *infra.*)

El Capitan filed a petition for review in the California Supreme Court, asserting that the decision of this Court in *Pilot Life Insurance Co. v. Dedeaux*, (1987) 481 U.S. 41, 107 S.Ct. 1549, compelled a ruling that § 3111 is preempted. The California Supreme Court remanded the case to the Court of Appeal for further consideration in light of *Pilot Life.* (Appendix C, *infra.*) On remand, the Court of Appeal reversed its earlier opinion and held that *Pilot Life* had "changed" the law, requiring preemption of § 3111 (*El Capitan II*, Appendix D).

CSCAC timely filed a petiton for review in the California Supreme Court, supported by briefs and letters from more than a dozen counsel for prospective *amici curiae.* On April 21, 1988, the California Supreme Court granted review. On June 20, 1991, the California Supreme Court issued its decision (*Carpenters Southern California Administrative Corporation v. El Capitan Development Company*, 53 Cal.3d 1041 ("*El Capitan III*") Appendix A, *infra.*) By a vote of 5-2, the California Supreme Court held that Civil Code § 3111 is preempted because it "relates to" ERISA regulated employee benefit plans "by creating an additional funding mechanism for ERISA plans not provided for by Congress. . ." 53 Cal.3d at 1051. The court relied heavily upon the recent decision of the U.S. Court of Appeals for the Fifth Circuit in *Ironworkers Pension Fund v. Terotechnology Corporation* (1990) 891 F.2d 548, *cert. denied,* (1991) ____ U.S. ____, 110

S.Ct. 3272, and rejected the reasoning in other recent appellate court opinions upholding the use of state collection remedies to enforce employers' collection obligations to multi-employer fringe benefit trust funds; *see, e.g., Plumber's Local 458 v. H. Immel, Inc.* (1989) 151 Wis. 2d 233, 445 N.W.2d 43; *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association* (1990) 221 Cal. App.3d Supp. 21; *Sasso v. Vachris* (1985) 484 N.E.2d 1359, 494 NYS 2d 856; *Carpenters Health & Welfare Trust Fund v. Parnas Corp.*, (1986) 176 Cal. App.3d 1196. The lengthy and vigorous dissent filed by two justices argued that the majority had ignored the standards for ERISA preemption set forth by this Court in *Mackey v. Lanier Collection Agency & Service* (1988) 486 U.S. 825, 108 S.Ct. 2182 and other cases and concluded that the majority had misapplied ERISA's preemption clause.

Because the present case squarely presents an issue on which there is a split of authority among lower appellate courts (and between the members of the California Supreme Court itself) CSCAC now petitions this court for a writ of certiorari.

V

REASONS THE WRIT SHOULD BE GRANTED

A. The Guidance of This Court is Needed to Resolve a Conflict Among Lower Appellate Courts.

For many years, state and federal appellate and trial courts have reached conflicting conclusions regarding the application of § 514(a) of ERISA to state collection remedies; *see e.g., Sasso v. Vachris* (1985) 484 N.E.2d 1359, 494 NYS 2d 856 [state collection remedies not preempted]; *Carpenters Health & Welfare Fund of Philadelphia v. Ambrose* (3d Cir. 1983) 727 F.2d 279 [same]; *Laborers Fringe Benefit Funds v. Northwest Concrete & Construction, Inc.* (6th Cir. 1981) 640 F.2d 1350, 1352 [state injunctive remedies available to enforce collection of trust fund contributions]; *Trustees for the Alaska Hotel & Restaurant Employees Health & Welfare Fund v. Hansen,* (Alaska 1984) 688 P.2d 587 [enactment of 1980 amendments to ERISA did not displace state collection remedies]; *Carpenters Health & Welfare*

Trust Fund v. Parnas Corporation (1986) 176 Cal. App.3d 1196 [state lien laws not preempted by ERISA] (disapproved in *El Capitan III*); *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association* (1990) 221 Cal. App.3d Supp. 21 [same holding] (also disapproved in *El Capitan III*); *Retirement Fund of the Fur Manufacturing Industry v. Getto & Getto, Inc.*, (S.D.N.Y. 1989) 714 F.Supp. 651, 670 [state collection remedies not preempted]; *Planned Consumer Marketing, Inc. v. Coats & Clark, Inc.*, (1988) 527 N.Y.S.2d 185, 190-191, 522 N.E.2d 3 [state corporate statute permitting judgment creditor to bring action against a director or officer for contribution violations relating to an ERISA trust not preempted by ERISA]; *McMahon v. McDowell*, (3d Cir. 1986), 794 F.2d 100 (state collection remedies preempted]; *Ironworkers Pension Fund v. Terotechnology* (5th Cir. 1990) 891 F.2d 548, *cert. denied* (1991), ___ U.S. ___, 110 S.Ct. 3272. [ERISA preempts state lien remedy for fringe benefit trusts]; *Edwards v. Bethlehem Steel Corp.* (Ind. App. 1990), 554 N.E. 2d 43 [same].[1]

The issue of preemption of state lien laws is of critical importance to employee benefit trusts in the construction industry, because such trusts depend heavily on the lien laws to enforce the contribution obligations of employers. The construction industry is a highly fragmented segment of the American economy; in California, thousands of small contractors compete to perform construction work. (*See*, John T. Dunlop, "The Industrial Relations System in Construction," in Weber (Ed.) *The Structure of Collective Bargaining* (New York; Free Press of Glencoe, 1961) pp. 255-277, and Daniel Q. Mills, "Industrial Relations and Manpower in Construction" (Cambridge; MIT Press, 1977) p.

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[1] In a just-published decision, a divided panel of the U.S. Court of Appeals for the Ninth Circuit has held that California Civil Code § 3111 is preempted by ERISA; *Sturgis v. Miller*, ___ F.2d ___ (U.S.C.A. No. 90-15054 (September 3, 1991)). The panel majority held the statute preempted because "Section 3111 contains a clear reference to and connection with ERISA." The dissent argued that Civil Code § 3111 is part of a comprehensive statutory scheme to protect California employees' entire wage and fringe benefit package and is beyond the preemptive reach of ERISA.

385. Small construction companies often go bankrupt, dissolve or simply "disappear."[2] One federal appellate court has taken specific note of a contractor which reportedly changed the name of its business eighteen times within a period of just nine months; *see NLRB v. Associated General Contractors of California, Inc.,* (9th Cir. 1980) 633 F.2d 766, 769. Absent the availability of a lien or other security device to compel payment, trust funds are often unable to collect delinquent benefit contributions. Elimination of the lien remedy may jeopardize the ability of the funds to provide pension and health and welfare benefits at current levels.

As the dissenters in the California Supreme Court argued: "To conclude that state lien laws are preempted when ERISA plans are involved means that millions, perhaps billions, of dollars . . . are jeopardized . . . To suggest that a Congress that adopted a comprehensive law to protect the interests of participants in employee benefit plans intended to preempt state lien laws strains credulity." 53 Cal.3d at 1064.

B. The California Supreme Court's Decision Ignores the Framework for Preemption Analysis Developed by This Court.

While acknowledging and citing many of the cases from this Court reviewing ERISA preemption issues, the California Supreme Court's opinion ignores the framework for preemption analysis set forth by this Court in *Fort Halifax Packing Co., Inc. v. Coyne* (1987) 482 U.S. 1, 107 S.Ct. 2211 and *Pilot Life Ins. Co. v. Dedeaux,* (1987) 481 U.S. 41 41-42, 107 S.Ct. 1549. Both *Fort Halifax* and *Pilot Life* emphasize the principle that, under ERISA, as in any preemption analysis, " 'The purpose of Congress is the ultimate touchstone' " (*Fort Halifax,* 482 U.S. 1, 19, 107 S.Ct. 2211, 2216; *citing Malone v. White Motor Corp.,* (1978) 435 U.S. 497, 504, 98 S.Ct. 1195, 1189 (1978).) In *Pilot Life,* this Court stated that "[i]n expounding a statute we [are]

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[2] The 1977 Census of Construction Industries found that there were more than 288,000 "specially trained contractors". On the average, each firm employed just six construction workers. *See,* U.S. Bureau of Census, Census of Construciton Industries (1977), cited in Statistical Abstract of the United States (1979) Table 1365, p. 776.

not . . . guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy." *Pilot Life, supra,* 481 U.S. 41, 51, 107 S.Ct. 1549, 1555. Ignoring these settled principles, the California Supreme Court's majority focused narrowly on two phrases in Section 514 of ERISA, 29 U.S.C. § 1144.

Section 514(a) states that ERISA supersedes "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . ." 29 U.S.C. § 1144(a). The California Supreme Court has held that Civil Code § 3111 is preempted because it "relates to" employee benefit plans "by creating a mechanism for enforcing an employer's contribution obligations that Congress did not provide." 53 Cal.3d at 1048.

The lower court reasoned that Civil Code § 1311 must be within the preemptive reach of § 514(a) because "a law 'relates to' an employee benefit plan in the normal sense of the phrase, if it has a connection with or reference to such a plan." (*El Capitan III*) 53 Cal.3d at 1048, citing *Pilot Life, supra,* 481 U.S. 41, 47, 107 S.Ct. 1849 (1987). But this Court has never stated that determination of whether a law "has a connection with or reference to" an ERISA-regulated plan is, by itself, dispositive of the preemption question. Indeed, this Court's decision in *Shaw v. Delta Airlines,* (1983) 463 U.S. 85, 100, n. 21, 103 S.Ct. 2890 recognizes that "[s]ome state actions may affect employee benefit plans in too tenuous, remote or peripheral a manner to warrant a finding that the law 'relates to' the plan". State collection remedies were clearly a "peripheral" concern of Congress at the time ERISA was enacted in 1974. Indeed, the subject of collection remedies is not addressed at all in the 1974 legislative history. The California Supreme Court does not suggest any possible reason why Congress would have wished to wipe out long-standing collection remedies created by state law.

Many laws which have "a connection with or reference to . . . a plan" have been held not to be preempted by ERISA; *see* e.g., *American Telephone and Telegraph Co. v. Merry,* (2d Cir. 1979) 592 F.2d 118, 121; *Carpenters Pension Trust v. Kronschnabel,* (9th Cir. 1980) 632 F.2d 745, *cert. denied* (1981) 453 U.S. 922, 101 S.Ct. 3159; *Stone v. Stone,* (9th Cir. 1980) 632 F.2d 740,

cert. denied (1981) 453 U.S. 922, 101 S.Ct. 3159. *See also, Retirement Trust Fund of the Plumbing, Etc. v. Franchise Tax Board*, (9th Cir. 1990) 909 F.2d 1266, 1280-1281 [tax levy procedure which permitted garnishment of benefits owed to participants under a plan not to be preempted by ERISA because the levy "only tenuously affects the vacation trust itself"]; *Franchise Tax Board v. Construction Laborers Vacation Trust*, (1988) 204 Cal. App.3d 955.

Admittedly, the scope of ERISA's preemption clause is broad; *see Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 16, 107 S.Ct. 1549, 1552. This Court has previously held that the preemption clause is as broad as its language suggests; *see Shaw v. Delta Air Lines*, 463 U.S. 85, 98-100 and nn. 18-20, 103 S.Ct. 2890, 2900-01 and nn. 18-20. But In each of this court's decisions in which a state law has been held preempted by ERISA, the law has trenched upon the regulatory scheme of ERISA in some meaningful way. *See Alessi v. Raybestos-Manhattan, Inc.* (1981) 451 U.S. 504, 523, 101 S.Ct. 1985 [state statute limiting plans' set-off rights preempted]; *Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 107 S.Ct. 1549 [state law claims relating to administration of plan preempted]; *Mackey v. Lanier Collections Agency and Service* (1988) 486 U.S. 825, 108 S.Ct. 2181 [state statute excluding ERISA plan benefits from garnishment preempted]; *FMC Corporation v. Holliday* (1990) 498 U.S. ____, 111 S.Ct. 403 [state statute denying subrogation rights to ERISA-regulated plans preempted]; *Ingersoll-Rand v. McClendon* (1990), 498 U.S. ____, 111 S.Ct. 478 [wrongful discharge action alleging termination to avoid benefit plan liability preempted].[3]

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[3] In *Shaw v. Delta Air Lines* (1983) 463 U.S. 85, 103 S.Ct. 2890, this court held certain provisions of the New York Human Rights Law to be preempted by ERISA but "only insofar as it prohibits practices that are lawful under federal law." 463 U.S. at 108, 103 S.Ct. at 2906. California Civil Code § 3111 does not purport to prohibit any practices which are lawful under federal law; nor does it restrict the operation of multi-employer trust funds in any way. Thus, under the *Shaw* test, the statute survives preemption.

In the present case, by contrast, use of the mechanic's lien remedy will have no appreciable effect on the ERISA regulatory scheme, while preemption of California Civil Code § 3111 will frustrate the state's purpose in protecting entire wage and fringe benefit package of workers. As this Court has stated: "We also must presume that Congress did not intend to preempt areas of traditional state regulation." *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 740, 105 S.Ct. 2380, 2389 citing *Jones v. Rath Packing Co.*, (1977) 430 U.S. 519, 525, 97 S.Ct. 1305, 1309. Cf. *Lingle v. Norge Division of Magic Chef, Inc.* (1988) 486 U.S. 399, 108 S.Ct. 1877.

The California Supreme Court further held that Civil Code Section 3111 falls within the terms of Section 514(c) of ERISA, 29 U.S.C. § 1144(c), which provides that ERISA's preemptive reach includes any law which "purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans."

According to the California Supreme Court, "Section 3111 regulates ERISA plans by creating a funding mechanism not provided by Congress." 53 Cal.3d at 1051.

The California Supreme Court's holding that the provision of an ancillary state collection remedy somehow "regulates" fringe benefit trust funds simply makes no sense. Permitting such funds to have lien rights to secure tha portion of a workers total compensation package which is paid as fringe benefits does not "regulate" such funds in any meaningful way. In finding that Civil Code § 3111 "regulates" employee benefit plans, the California Supreme Court stretches the natural meaning of the term beyond recognizable limits. *Black's Law Dictionary* (5th Ed., 1979) defines "regulates" as "to fix, establish or control; to adjust by rule, method or established mode; to direct by rule or restrictions; to subject to governing principles or laws. . . Regulate means to govern or direct according to rule or to bring under control of constituted authority and prohibit, to arrange in proper order, and to control that which already exists." Permitting employee benefit trusts to exercise a collection remedy does not "regulate" such trusts since it does not limit, direct, prescribe or control their conduct. Cf *FMC Corp. v. Holliday* (1990), 498 U.S. ____, 111 S.Ct. 403 [a state statute which *precludes* benefit plans from

exercising subrogation rights relates to and regulates such plan]. Not only does it not regulate the "terms and conditions" of employee benefit plans; it does not direct, limit or control their operation in any significant way. Like other portions of California's mechanics' lien law, it *does* regulate land rights, by making landowners potentially liable for the full value of labor contributed to works of improvement on their property.

This Court's holding in *Fort Halifax Packing Co., Inc. v. Coyne*, (1987) 482 U.S. 1, 107 S.Ct. 2211 contains a thorough and detailed analysis of the purpose of the preemption clause of § 514(a) of ERISA. This Court held that the preemption clause was designed "to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." 482 U.S. at 9, 107 S.Ct. at 2216. Summarizing its analysis, this Court stated: "It is thus clear that ERISA's preemption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities. A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them. Preemption ensures that the administrative practices of a single plan will be governed only by a single set of regulations." 482 U.S. at 11, 107 S.Ct. at 2217.[4]

The issue in *Fort Halifax* was whether a Maine statute requiring employers to provide a one-time severance payment to employees in the event of a plant closing was preempted by ERISA. The Court held that the statute was not preempted by ERISA because it did not create any "potential for the type of conflicting regulation of benefit plans that ERISA preemption was intended to prevent." 482 U.S. at 14, 107 S.Ct. at 2219.

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[4] In a subsequent decision, this Court stated that "in enacting ERISA, Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employee benefits from accumulated funds." *Massachusetts v. Morash* (1989), 490 U.S. 107, 109 S.Ct. 1668.

This Court's holding in *Fort Halifax* compels the conclusion that California Civil Code § 3111 is not preempted by ERISA. Civil Code § 3111 has no impact whatsoever on the processing of benefit claims and the disbursement of benefits. Its whole focus is *external* to the benefit administration process. Nor is there anything inconsistent in the holding of *Pilot Life* and *Fort Halifax*; both cases focus on the issue of whether state regulation intrudes on the process of providing employee benefits and administering employee benefit claims.[5]

Fort Halifax further holds that where a state statute does *not* implicate the concerns of ERISA's preemption provision—that is, the statute does not address the plans' internal administrative functions—there is no preemption:

> "If a state law creates no prospect of conflict with a federal statute, there is no warrant for disabling it from attempting to address uniquely local social and economic problems." 482 U.S. at 19, 107 S.Ct. at 2221.

California has recognized the frequent problems that workers, subcontractors and materialmen encounter in securing payment for their services on construction projects. (See Part E, *infra.*) The California mechanics' lien statutes provide a comprehensive framework for ensuring that all such parties get paid for labor and materials contributed to works of improvement on real property. *See, generally, Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803. Neither the California Supreme Court nor El Capitan has cited any language in the text of ERISA or in its legislative history to indicate that Congress intended to upset the carefully integrated California statutory scheme for protecting the

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[5] In *Pilot Life, supra,* 481 U.S. at 51-52, 107 S.Ct. at 1555, this Court held a state cause of action preempted "because, in this case, the state cause of action seeks remedies for the *improper processing of a claim for benefits* under an ERISA-regulated plan. . ." [Emphasis supplied]

wages and fringe benefits of workers employed on construction projects in California. [6]

Many courts have emphasized that, outside the benefit administration context, employee benefits trusts should be treated the same as other business entities. For example, in *Duffy v. King Cavalier,* (1989) 218 Cal.App.3d 1517, the court held that an employee benefit trust should have the same rights as any other investor to secure redress for stockbroker fraud. Similarly, in *Lane v. Goren,* (9th Cir. 1083) 743 F.2d 1340, the court held that employee benefit trusts that act as employers cannot assert the shield of Section 514(a) of ERISA to exempt themselves from the application of fair employment laws. *See also, Franchise Tax Board v. Construction Laborers Vacation Trust,* (1988) 204 Cal. App.3d 955. The California Supreme Court has suggested no reason why employee benefit trust funds should not have the same rights as other creditors entitled to utilize the lien remedy.

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[6]As the dissent noted in *Sturgis v. Miller,* ____ F.2d ____ (9th Cir. No. 90-15054. September 3, 1991):

> "California creates mechanic's liens in favor of 'mechanic's, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . ' Cal. Civil Code 3110. Section 3111 provides the same lien to employee benefit trust funds for unpaid employer contributions. California thus does not single out ERISA plans for special treatment, but gives ERISA plans the same procedure to recover unpaid employer contributions as California gives to employees who are not members of ERISA plans. Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opinion is that employees who are not members of an ERISA plan may use mechanic's liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not. This turns the logic of *Mackey* on its head. *Mackey* precludes state laws that single out ERISA plans; it does not prohibit evenhanded state law enforcement procedures."

Because the California Supreme Court has applied ERISA's preemption clause without reference to the purpose of the clause, and the purpose of ERISA itself, this court should grant certiorari and reverse.

C. The Court Should Grant Certiorari to Clarify the Scope of the Holding in Pilot Life Insurance Co. v. Dedeaux.

A central issue in this case, and other cases considering the issue of ERISA preemption of state collection remedies, is the applicability of this Court's holding in *Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 107 S.Ct. 1549. In *Pilot Life*, this Court held that the remedies provided by § 502 of ERISA to claimants seeking employee benefits from ERISA-regulated benefit plans preempted all parallel state laws. This Court held that "The detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme . . . The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress had rejected in ERISA."

Pilot Life focuses on provisions of ERISA which have been in the statute since its inception. *Pilot Life* contains no discussion of the collection remedies which were added to ERISA in 1980, nor does it suggest that any collection remedy whatsoever was provided by ERISA prior to 1980. The "carefully integrated statutory scheme" described in *Pilot Life* did not, prior to 1980, contain any remedy which could possibly displace existing state law collection remedies.

Petitioner respectfully submits that the California Supreme Court has read *Pilot Life* far too broadly.[7] While all parties agree

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[7] This Court succinctly stated the limits of its holding in *Pilot Life* in its decision in *Metropolitan Life Insurance Co. v. Taylor*, (1987) 481 U.S. 58, 107 S.Ct. 1542 issued the same day: "In *Pilot Life Insurance Co. v. Dedeaux, ante* [citation] the Court held that state common law causes of action *asserting improper processing of a claim for benefits* under an employee benefit plan regulated by the Employer Retirement Income Security Act (ERISA) 88 Stat. 829, 29 U.S.C. § 1001, et seq., are preempted by the Act."

that the reach of federal preemption under § 514(a) of ERISA is wide, there is no hint in the legislative history or in any of the terms of the statute that Congress believed it was canceling literally dozens of state collection statutes across the country at a single stroke. Indeed, the legislative history of the 1980 amendments to ERISA compels the opposite conclusion. During hearings on the Multi-employer Pension Plan Amendments Act of 1980, which added §§ 512(g) and 515 to ERISA, 29 U.S.C. §§ 1132(g) and 1145, the validity of post-ERISA state collection remedies was recognized. House Report No. 96-869(II) on H.R. 3609 of the House Committee on Ways and Means, 96th Cong., 2d Sess., contains the following commentary on the new collection provisions:

> "The Committee's amendment provides that in the case of a civil action by any person to collect delinquent multi-employer plan contributions, *regardless of otherwise applicable law*, the court before which the action is brought may award the plaintiff (1) reasonable attorneys' fees, (2) court costs and (3) liquidated damages not to exceed twenty percent of the amount of delinquent contributions as determined by the court. However, these items are to be awarded to a plaintiff only to the extent that the multi-employer plan in question provided for such an award. The bill preempts any state or other law which would *prevent* the award of reasonable attorneys' fees, court costs or liquidated damages or which would limit liquidated damages to an amount below the twenty percent level. However, the bill does *not* preclude the award of liquidated damages in excess of the twenty percent level if an award of such a higher level of liquidated damages is permitted under state or other law. *The Committee amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multi-employer contributions.*" [Emphasis supplied]

This legislative history demonstrates that Congress did not intend to strip multi-employer trust funds of their existing collection remedies under state law. Instead, the intent was to provide powerful new weapons, in the form of potential awards of attorneys' fees, interest and liquidated damages, to discourage employ-

ers from engaging in protracted and expensive litigation over simple collection claims.[8]

As the U.S. Court of Appeals for the Sixth Circuit noted in *Laborers Fringe Benefit Funds v. Northwest Concrete & Construction, Inc.*, (1981) 640 F.2d 1350, 1352:

> "The legislative history underlying Section 502 indicates that Congress intended that the enforcement provisons should have teeth: the provisions should be liberally construed 'to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act.' H. Rep. No.93-533, 93d Cong. & Ad. News p. 4639, 4655. This history further states that *'the intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts* and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibility under state law for recovery of benefits due to participants.' " [Emphasis supplied.]

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[8] In *Sasso v. Vachris*, (1985) 494 NYS 2d 856, 489 N.E. 2d 1359 the New York State Court of Appeals rejected the argument that the collection remedies added to ERISA in 1980 dispiaced state law, reasoning as follows:

> "Nor do the 1980 amendments to ERISA indicate an intent on the part of Congress to preempt state remedies such as § 630 [of the New York Business Corporation Law]. They merely added a statutory obligation upon employers to make contributions to multiemployer plans as required by the terms of the employee benefit plan or the collective bargaining agreement [citation omitted] and provided a civil cause of action in favor of fiduciaries to enforce this obligation [citation omitted]. Contrary to the positon taken by defendants, the relevant legislative history of these amendments evince a specific congressional intent that ERISA's civil remedies merely supplement, rather that supersede, existing state remedies such as Business Corporation Law § 630, at least insofar as they provide for the collection of delinquent employer contributions to employee benefit plans."

D. Preemption of State Lien Laws Leaves an Unexplained "Gap" in the Collection Remedies Available to Multi-Employer Benefit Trust Funds.

In support of its conclusion that ERISA preempts state collection remedies, the California Supreme Court notes that § 515 of ERISA, 29 U.S.C. § 1145, permits employee benefit plans to bring collection actions against delinquent employers. The court reasoned that the presence of this collection remedy within ERISA supports the inference that state lien remedies are preempted. *El Capitan III,* 53 Cal.3d at 1052. The difficulty with this reasoning is that § 515 was not added to ERISA until 1980, though ERISA's preemption clause was part of the original statute enacted in 1974. The amendment of ERISA in 1980 to include a collection remedy simply cannot support the inference that the preemption clause was intended to wipe out state collection remedies. If this were so, there would be a six year "gap" during which employee benefit trust funds had neither remedies under ERISA nor remedies under state lien laws.

The California Supreme Court avoids this anomaly by asserting that § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), which was part of ERISA as initially enacted, created a collection remedy. *El Capitan III,* 53 Cal.3d at 1052. But numerous federal courts have held that no remedy for collection of delinquent employer contributions was provided by ERISA prior to the addition of § 515 in 1980.

For example, in *Carl Allen v. McWilliams Electric Co.,* (D. Mo. 1980) 494 F. Supp. 53, a federal district court refused to permit employee benefit trusts to sue an allegedly delinquent employer under § 502 of ERISA, stating "This suit for contributions of money allegedly due and owing qualifies only for the future equitable relief prayed for . . . not for a money award for past violations." 494 F. Supp. at 56. The same conclusion was reached by another federal trial court in *American Benefit Plan Administrators v. Foley,* 2 EBC 1897 (CD Cal. 1981) where the court stated "Prior to 1980, § 502(g) of ERISA (29 U.S.C. § 1132(g)) provided only for equitable relief and any action for unpaid plan contributions could, therefore, only be brought under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185."

State courts reached the same conclusion. For example, in *Vermeer v. Tomken Construction*, (1980) 49 Or App. 37, the Court of Appeals held that the pre-1980 version of § 502(a) of ERISA did not provide a cause of action to recover delinquent trust fund contributions. The court stated: "ERISA provides no remedy for trustees seeking to recover delinquent contributions to a trust fund . . . therefore, though plaintiff's action is one to enforce the terms of its agreement with defendant, it is not an action under 29 U.S.C. § 1132(a)(3)(B)(ii) requiring exclusive federal jurisdiction . . ." These cases belie the California Supreme Court's assertion that § 515 of ERISA was added to the statute only to "streamline" an already-existing collection remedy. There simply was no ERISA collection remedy prior to 1980.

Once it is established that ERISA did not, as originally enacted, contain a remedy to compel payment of delinquent employer trust fund contributions, the illogic of the California Supreme Court's decision is plain. If, as the California Supreme Court held, § 514(a) of ERISA was intended to prempt all non-federal collection remedies, why did ERISA, as originally enacted, contain no substitute remedy, and why does the 1974 legislative history contain no reference to collection issues? The obvious answer is that Congress did not intend that ERISA's preemption clause would apply to such remedies.

The reasoning of this Court in *Mackey v. Lanier Collection Agency* (1988) 486 U.S. 825, 108 S.Ct. 2182 is particularly instructive in this regard. In *Mackey*, this Court concluded that Georgia's general garnishment statute was not preempted by ERISA because (1) ERISA provides no means for execution of judgments against employee benefit plans and (2) the federal scheme for enforcement of judgments evidenced by FRCP 69(a) contemplates the use of state procedures to enforce judgments. Applying the same reasoning as in *Mackey* to this case, it can be seen that (1) prior to 1980, ERISA provided no collection remedy and (2) the only federal collection remedy then available, under § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a) did not purport to preempt ancillary state collection remedies. In fact, federal courts have explicitly recognized that § 301 does not displace state lien laws; see *CSCAC v.*

Majestic Housing, (9th Cir. 1984), 743 F.2d 1341; *CSCAC v. D&L Camp Construction*, (9th Cir. 1984), 738 F.2d 999.

E. Preemption of California Civil Code Section 3111 Disrupts the California Statutory Scheme for Protecting the Wages and Benefits of Workmen.

The statute at issue in this case is not an isolated piece of legislative handiwork. It is part of an integrated network of California laws designed to ensure that construction workmen receive their full wages for labor contributed for works of improvement on California real property.

The mechanics' lien remedy was spawned by the California Constitution itself. The Constitution of 1879 required the Legislature to grant laborers and materialmen a lien upon property which they had improved. (*See* California Constitution Article XIV, Section 3; *Martin v. Becker* (1915) 169 Cal. 301, 316.) As the California Supreme Court has noted, "This state, from the earliest days, and consistently thereafter, has asserted its interest in protecting the claims of laborers and material men." *Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 826.

California Code of Civil Procedure § 1182, the predecessor to California Civil Code § 3111, was amended in 1965 to eliminate an ambiguity in the lien law. Though laborers were clearly entitled to record and foreclose mechanics' liens to protect their claims to direct wages, an issue had arisen as to whether they could assert lien rights with regard to fringe benefit payments made, in the first instance, to third parties. Since the intent of the lien law was to protect the workers' entire wage package, the law was amended to grant lien rights to protect the workers' fringe benefits. Assemblyman James R. Mills, Chairman of the State Assembly Committee on Rules, stated the purpose of the legislation as follows:

> "This bill provided that those trust funds established in accordance with collective bargaining agreements between labor and management, and to which management payments are made to provide fringe benefits to the wage agreement, shall be entitled to a lien on particular real property in the amount of the supplemental fringe benefit payments owing to

> it . . . These contributions are sometimes deducted from the wage checks of the workers, and, in all cases, *they are part of the total wage package of the worker* . . . The ambiguousness of the present law prohibits the trust funds from asserting the worker's lien rights. Although they have a sole fiduciary obligation to collect the money, this ambiguousness has resulted in loss of monies of substantial amounts to the workers and to the trust funds. This bill would permit a limited clarification to permit lawful trust funds the right to assert the workers' lien rights as they already exist, and would not expand or enlarge the rights which the worker now has." [Emphasis supplied][9]

The interest of the State of California in providing a comprehensive remedy to protect the wage package, including fringe benefits, of workers who perform construction services would be gravely eroded if Civil Code § 3111 is nullified by the preemptive force of federal law. The importance of the statute is equivalent to the state law provisions considered in *Stone v. Stone*, (9th Cir. 1980) 632 F.2d 740, *cert. denied* (1981) 453 U.S. 922, 101 S.Ct. 3159. In *Stone*, a federal appellate court affirmed a trial court decision which held that ERISA did not preempt California state courts from ordering an ERISA-regulated pension plan to pay a portion of a plan participant's pension benefits directly to his or her ex-spouse. The lower court cited the state's critical interest in

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[9] The California Supreme Court holds that the mechanic's lien remedy is preempted because it creates new substantive rights against parties not involved in the employer-trust fund relationship. As the dissent notes, however, "The lien does not create personal liability of the owner. It has long been recognized that the lien of the mechanic, artisan and supplier is equitable because those parties have created the very property upon which the lien attaches. Cf *Tuttle v. Montford* (1857) 7 Cal. 358, 360, *Connolly Development, Inc. v. Superior Court*, (1976) 17 Cal.3d 803, 825-827. Obviously, return of the materials or labor to the unpaid supplier or laborer is not a viable option, and the law's recognition of the unpaid suppliers' and laborers' contribution to the improvement does not create a debt or personal liability on the part of the owner, but only an interest in the property they helped create." *El Capitan III* 53 Ca.3d at 1065 (Broussard, J., dissenting).

regulating the sensitive area of family law, stating that "both Congress and the courts recognize that the whole subject of domestic relations of husband and wife, and parent and child, belongs to the laws of the states and not to the laws of the United States." *See also, American Telephone and Telegraph Co. v. Merry,* (2d Cir. 1979) 592 F.2d 118, 121; *Carpenters Pension Trust v. Kronschnabel,* (9th Cir. 1980) 632 F.2d 745, *cert. denied* (1981) 453 U.S. 922, 101 S.Ct. 3159.

Preemption of California Civil Code § 3111 would create an anomaly in California law. Those workers whose payments for fringe benefit contributions are deducted from their cash wages would have a lien right for the full amount of their compensation.[10] By contrast, those workers who receive fringe benefits from employee benefit plans to which their employers directly contribute would be deprived of lien rights for a substantial portion of their total compensation package. (For many workers, the fringe benefit payments now constitute as much as thirty-five percent of their total compensation.)

This Court has long recognized that fringe benefits are an integral part of the workman's total compensation. In *United States v. Carter* (1956) 353 U.S. 210 77. S.Ct. 793, this court held that a surety to fringe benefits funds on a payment bond furnished by a contractor pursuant to the Miller Act (40 U.S.C. § 269a *et seq.*) was subject to suit by fringe benefit funds seeking to recover delinquent employer contributions. This Court reasoned in part that the "contributions were a part of the compensa-

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[10] The California Supreme Court asserts that employee benefit plans are different from the other entities entitled to assert mechanic's lien rights, because the other entities directly perform labor and provide material for construction projects, which the plans do not. 53 Cal.3d at 1049. While this may be true, it is scarcely a basis for invalidating the lien rights of the benefit plans. The benefit plans act as a repository and funding source for benefits provided to workmen who *do* contribute to works of improvement on real property. Permitting the workmen to pursue lien claims for the cash portion of their wages, while denying lien protection for the portion of their wages paid into employee benefit plans eviscerates the California Legislature's intent to protect the *entire* wage package of the workman.

tion for the work to be done by [the] employees" and that trustees "stand in the shoes of the employees and are entitled to enforce their rights." 353 U.S. at 217-218, 220. *See, also, Morrison-Knudsen Construction Co. v. OWCP* (1982) 461 U.S. 624, 631, 102 S.Ct. 2045.

It is simply incomprehensible that Congress intended that workmen who derive fringe benefits from ERISA-regulated employee benefits plans would become second class citizens, without the full protection of lien rights enjoyed by their coworkers.[11] Yet that is the result of the California Supreme Court's reasoning in the *El Capitan* case.

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[11] As the dissent below noted: "ERISA plans and others who have unpaid claims based on construction projects are usually unpaid because there are not enough funds to go around. To permit architects, engineers, surveyors, mechanics, laborers and others enumerated in Civil Code § 3110 to obtain liens while denying liens to ERISA plans is to make ERISA plans second-class creditors. The effect of the preference will ordinarily mean that Section 3110 creditors will have a preference and will receive all or part of their claims while ERISA plans will have none. Making the plans second-class creditors flies in the face of ERISA's express policy to protect the interest of participants of the plan (29 U.S.C. § 1001(b), (c)) and, more particularly, ERISA's express policy "to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multi-employer pension plans" and "to provide a financially self-sufficient program for the guarantee of employer benefits under multi-employer plans." (29 U.S.C. § 1001a(c)(3), (4).)" 53 Cal.3d at 1062.

VI

CONCLUSION

For the reasons set forth herein, petitioner prays that the writ of certiorari be granted.

DATED: September 16, 1991

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Appendix A

[No. S000772. June 20, 1991.]

Carpenters Southern California Administrative Corporation, Plaintiff and Appellant,

v.

El Capitan Development Company, Defendant and Respondent.

Counsel

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Littler, Mendelson, Fastiff & Tichy, Karen E. Ford, Major Williams, Jr., Dorothy J. Stephens and Gregory R. Meyer for Defendant and Respondent.

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Opinion

PANELLI, J.—The issue presented is whether Civil Code section 3111,[1] which creates liens on real property in favor of trust

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[1] Civil Code section 3111 provides: "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of

funds established pursuant to collective bargaining agreements, is preempted by the Employee Retirement Income Security Act of 1974 (ERISA). (29 U.S.C. § 1001 et seq.) We conclude that ERISA does preempt section 3111.

Facts

Carpenters Southern California Administrative Corporation (CSCAC) is the administrator and the assignee of rights of various multiemployer trust funds established under collective bargaining agreements, including the Carpenters' Trust Funds. The Carpenters' Trust Funds are employee pension benefit plans or employee welfare benefit plans within the meaning of ERISA. (See 29 U.S.C. § 1002(1), (2)(A), & (21)(A).) CSCAC is a "fiduciary" as defined in ERISA. (29 U.S.C. § 1002(21)(A).)

Collective bargaining agreements often require employers to make contributions to trust funds for the benefit of covered employees. In the present case, the covered employees are members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (Unions). CSCAC, due to its fiduciary relationship with the Unions and in its role as administrator of the trust, has a duty to collect contributions from employers who fail to make the required payments to the trust.

El Capitan Development Company (El Capitan) developed a condominium project on its property in Bakersfield. The general contractor was Grupe Construction (Grupe). Grupe subcontracted with Pacific Southwest Framing for part of the framing work. In its complaint, CSCAC alleges that John Hall Enterprises (John Hall), with whom CSCAC made a collective bargaining agreement, and Pacific Southwest Framing are a single entity. John Hall failed to make fringe benefit contributions to the trust funds in excess of $121,000.

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fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

All further statutory references are to the Civil Code unless otherwise indicated.

Pursuant to section 3111, CSCAC recorded trust fund liens against El Capitan's real property in order to collect the delinquent contributions to the trust funds. CSCAC later sued El Capitan in Kern County Superior Court to foreclose the liens. CSCAC alleged that, because John Hall and Pacific Southwest Framing are a single entity, Pacific Southwest Framing was bound by CSCAC's agreement with John Hall and was therefore obligated to make the contributions to the trust.[2] CSCAC further alleged that because the unpaid contributions were due on account of work performed on El Capitan's property, section 3111 created liens on that property.

El Capitan, which has not signed a collective bargaining agreement with CSCAC, demurred to CSCAC's complaint, arguing that ERISA preempted section 3111. (See 29 U.S.C. § 1144.) The trial court granted El Capitan's demurrer with leave to amend. When CSCAC declined to amend, the court entered a judgment of dismissal.

The Court of Appeal reversed the judgment. We granted El Capitan's petition for review and retransferred the matter to the Court of Appeal for reconsideration in light of *Pilot Life Ins. Co. v. Dedeaux* (1987) 481 U.S. 41 [95 L.Ed.2d 39, 107 S.Ct. 1549] (hereafter *Pilot Life*). On remand, the Court of Appeal concluded that ERISA preempted section 3111 and affirmed the judgment of dismissal. We affirm.

Discussion

Introduction

(1a) Section 3111 creates liens on real property in favor of trust funds established pursuant to collective bargaining agreements in amounts equal to the fringe benefit contributions which are due under those collective bargaining agreements. Under section 3111, if an employer fails to make contributions, the trust fund can record a lien on the property where the work was performed and foreclose the lien to compel payment of the debt.

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[2] Pacific Southwest Framing has not signed a collective bargaining agreement with CSCAC.

(2a) ERISA is a comprehensive federal statutory scheme designed to promote the interests of employees and their beneficiaries in employee benefit plans. (*Shaw v. Delta Airlines, Inc.* (1983) 463 U.S. 85, 90 [77 L.Ed.2d 490, 497, 103 S.Ct. 2890].) "[ERISA] imposes participation, funding, and vesting requirements on pension plans.... As part of this closely integrated regulatory system Congress included various safeguards to preclude abuse and 'to completely secure the rights and expectations brought into being by this landmark reform legislation.' S. Rep. No. 93-127, p.36 (1973). Prominent among these safeguards [is] ... § 514(a), 29 U.S.C. § 1144, ERISA'S broad pre-emption provision...." (*Ingersoll-Rand Co. v. McClendon* (1990) 498 U.S. ____, ____ [112 L.Ed.2d 474, 482-483, 111 S.Ct. 478, 482] (hereafter *Ingersoll-Rand*).)

(1b) We must decide whether ERISA's broad preemption provision encompasses section 3111. We conclude that it does. (2b) " '[T]he question whether a certain state action is preempted by federal law is one of congressional intent. "The purpose of Congress is the ultimate touchstone." ' [Citations.] To discern Congress' intent we examine the explicit statutory language and the structure and purpose of the statute. [Citations.] ... [¶] Where, as here, Congress has expressly included a broadly worded pre-emption provision in a comprehensive statute such as ERISA, our task of discerning Congressional intent is considerably simplified." (*Ingersoll-Rand, supra,* 498 U.S. at p. __ [112 L.Ed.2d at p. 483, 111 S.Ct. at p. 482].)

Section 514(a) of ERISA expressly preempts "any and all state laws insofar as they may now or hereafter *relate* to any employee benefit plan...." (29 U.S.C. § 1144(a), italics added.) Section 514(c) of ERISA defines the terms used in section 514(a): "(1) The term 'State Law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.... [¶] (2) The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." (29 U.S.C. § 1144(c).)

CSCAC argues that ERISA preempts only those state laws that regulate the terms and conditions of ERISA plans. This argument derives from the phrase "purports to regulate," which appears in the definition of "State" in section 514(c)(2) of ERISA. (29 U.S.C. § 1144(c)(2).) The case law, however, does not support CSCAC's argument. All that is necessary to invoke ERISA's statutory preemption provision is that the state law in question "relate to" an ERISA plan. As will be shown, section 3111 "relates to" such plans by creating a mechanism for enforcing an employer's contribution obligations that Congress did not provide.

Furthermore, even if we were to accept for the sake of argument CSCAC's proposition that a state law, to be preempted, must regulate an ERISA plan, section 3111 still would be preempted. Although section 3111 does not specifically require that certain terms be included in a plan, it does purport to regulate the conditions under which the terms of a plan can be enforced. The section does so by creating an additional cause of action for enforcing contribution obligations and by making an additional entity liable for such contributions. (See *Iron Workers Pension Fund v. Terotechnology* (5th Cir. 1990) 891 F.2d 548, 553 (hereafter *Iron Workers*).)

The Breadth of Federal Preemption Under ERISA

(2c) The United States Supreme Court in a series of opinions has emphasized the unusual breadth of ERISA's express preemption provision, describing section 514(a) of ERISA as a "virtually unique pre-emption provision" (*Franchise Tax Bd. v. Laborers Vacation Trust* (1988) 463 U.S. 1, 24, fn. 26 [77 L.Ed.2d 420, 440, 103 S.Ct. 2841]), and as a clause "conspicuous for its breadth." (*FMC Corp. v. Holliday* (1990) 498 U.S. ____, ____ [112 L.Ed.2d 356, 364, 111 S.Ct. 403, 407].) The court has also characterized the provision as "deliberately expansive" (*Pilot Life, supra*, 481 U.S. at p. 46 [95 L.Ed.2d at p. 46], citing *Alessi v. Raybestos-Manhattan, Inc.* (1981) 451 U.S. 504, 523 [68 L.Ed.2d 402, 416, 101 S.Ct. 1895]), and as "establish[ing] as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA."

(*FMC Corp. v. Holliday, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 364, 111 S.Ct. at p.407].)

(3) Consistent with the foregoing, the high court has also interpreted broadly the statutory term "relate to." (29 U.S.C. § 1144(a).) Most recently, in *Ingersoll-Rand, supra*, the court explained that "[t]he key to § 514(a) is found in the words 'relate to.' Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause 'applicable only to state laws relating to the specific subjects covered by ERISA.' " (*Ingersoll-Rand, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 483, 111 S.Ct. at p. 482], citations omitted.) This is consistent with the court's previous instruction in *Pilot Life* that " 'a state law "relate[s] to" a benefit plan, "in the normal sense of the phrase, if it has a connection with or reference to such a plan." ' " (*Pilot Life, supra*, 481 U.S. at p. 47 [95 L.Ed.2d at p. 48], citations omitted.) "Because of the breadth of the preemption clause and the broad remedial purpose of ERISA, 'state laws found to be beyond the scope of [section 514(a) of ERISA] are few.' "(*Cefalu v. B. F. Goodrich Co.* (5th Cir. 1989) 871 F.2d 1290, 1294, fn. omitted.)

In determining whether section 3111 "relates to" a benefit plan, we take note that the United States Supreme Court has on several occasions stated that "state laws which make 'reference to' ERISA plans are laws that 'relate to' those plans within the meaning of § 514(a) [of ERISA]." (*Mackey v. Lanier Collection Agency & Serv.* (1988) 486 U.S. 825, 829 [100 L.Ed.2d 836, 843, 108 S.Ct. 2182], citing *Pilot Life, supra*, 481 U.S. at pp.47-48 [95 L.Ed.2d at pp. 47-48]; *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 739 [85 L.Ed.2d 728, 740, 105 S.Ct. 2380].) Indeed, the court has "virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted under § 514(a)." (*Mackey v. Lanier Collection Agency & Serv., supra*, 486 U.S. at p. 829 [100 L.Ed.2d at p. 844].)

Section 3111 Is Specifically Designed to Affect Employee Benefit Plans

(1c) Section 3111 is specifically designed to affect employee benefit plans. The section expressly refers to "trust fund[s] established pursuant to a collective bargaining agreement" and provides to such funds a mechanics' lien remedy not provided by Congress. Thus, section 3111 singles out ERISA plans for special treatment.

CSCAC argues that "ERISA trust funds receive no greater benefits under [section 3111] than any other party entitled to invoke the mechanics' lien remedy." To be sure, section 3111 does treat ERISA plans the same as other parties whose claims are based on having furnished labor or materials for a construction project. The significant difference, however, is that ERISA plans do not furnish labor or materials for construction projects. Accordingly, to treat them as persons who do furnish labor or materials is to single them out for special treatment.[3] Because section 3111 singles out ERISA plans for special treatment and is, in fact, designed to affect them specifically, we conclude the statute "relates to" ERISA plans.[4]

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[3] Another significant difference between ERISA plans and other persons whose claims are based on furnishing labor or materials is that the latter assert their claims under section 3110. Section 3111 is specifically for the use of express trust funds established pursuant to collective bargaining agreements.

[4] CSCAC contends that because section 514(a) of ERISA refers to "plans" and section 3111 refers to "trust funds," section 3111 is not preempted by ERISA. However, other statements and arguments made by CSCAC belie the contention that section 3111 does not affect ERISA *plans*. For example, CSCAC states that the "Carpenters Trust Funds are employee pension benefit plan or employee welfare benefit *plans* within the meaning of ERISA; see 29 U.S.C. §§ 1002(1) and 1002(2)(a)." (Italics added.) Also, CSCAC argues that the mechanics' lien action codified in section 3111 provides an effective and necessary remedy for employee benefit *plans* to enforce an employer's promise to pay fringe benefit contributions and that preemption of section 3111 may affect the *plans*' ability to maintain benefit levels for their participants.

Preemption Does Not Require Regulation of the Terms and Conditions of an ERISA Plan

(4) Contrary to CSCAC's argument, it is well settled that a state law need not regulate the terms and conditions of an ERISA plan for preemption to apply. The United States Supreme Court has rejected the similar argument that the statutory term "purports to regulate" in section 514(c)(2) of ERISA causes section 514(a) of ERISA to preempt only those state laws that affect a plan's terms, conditions, or administration. (*Ingersoll-Rand, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 485, 111 S.Ct. at p. 484].) In rejecting this argument, the court stated that, "[the argument] misreads § 514(c)(2) [of ERISA] and consequently misapprehends its purpose.... Section 514(c)(2) expands, rather than restricts, [the] definition [of State] for pre-emption purposes in order to '*include*' state agencies and instrumentalities whose actions might not otherwise be considered state law. Had Congress intended to restrict ERISA's pre-emptive effect to state laws purporting to regulate plan terms and conditions, it surely would not have done so by placing the restriction in an adjunct definition section while using the broad phrase 'relate to' in the pre-emption section itself. Moreover, if § 514(a) [of ERISA] were construed as [defendant] urges, the 'relate to' language would be superfluous—Congress need only have said that 'all' state laws would be pre-empted. Moreover, our precedents foreclose this argument. In *Mackey*, the Court held that ERISA preempted a Georgia garnishment statute that *excluded* from garnishment ERISA plan benefits. [*Mackey v. Lanier Collections Agency & Serv., supra*, 486 U.S. at pp. 828, fn. 2, 830 (100 L.Ed.2d at pp. 843, 844).] Such a law clearly did not regulate the terms or conditions of ERISA-covered plans, and yet we found preemption. *Mackey* demonstrates that § 514(a) cannot be read so restrictively." (*Ingersoll-Rand, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 485, 111 S.Ct. at p. 484].)[5]

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[5] The Court of appeal originally decided this case by relying on *Carpenters Health & Welfare Trust Fund v. Parnas Corp.* (1986) 176 Cal.App.3d 1196 [222 Cal.Rptr. 668]. the *Parnas* case was decided before, and is inconsistent with, *Pilot Life*. Rather than using the "relate to" test, the *Parnas* decision used the much narrower preemption

Section 3111 Also Regulates ERISA Plans

(1d) Even though a state law need not regulate ERISA plans to be preempted, a finding that a state law does regulate ERISA plans necessarily includes a finding that the law "relates to" such a plan. (*Local Union 598 Etc. v. J.A. Jones Const. Co.* (9th Cir. 1988) 846 F.2d 1213, 1218, affd. (1988) 488 U.S. 881 [102 L.Ed.2d 202, 109 S.Ct. 210] (hereafter *Jones*).)[6] Section 3111 regulates ERISA plans by creating a funding mechanism not provided by Congress. Hence, the fact that section 3111 regulates ERISA plans provides further support for the conclusion that section 3111 "relates to" ERISA plans and is preempted.

Federal case law directly on point supports our view that section 3111, by creating an additional funding mechanism for ERISA plans not provided for by Congress, "regulates," and hence "relates to," ERISA plans and is for that reason preempted. In *Iron Workers, supra*, 891 F.2d 548, the Fifth Circuit considered a Louisiana mechanics' lien law that was functionally identical to section 3111. Borden Chemical had entered into a contract for maintenance services with Terotechnology Corporation. A trade council, on behalf of several unions, executed a collective bargaining agreement with Terotechnology for work to be performed at the Borden plant. The agreement required Terotechnology to contribute to employee benefit funds for the work by its employees at the Borden plant. After a period of

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standard discussed above: "ERISA's preemption of 'State law' is only of such laws as regulate the '*terms and conditions*' of employer benefit plans." (*Parnas, supra*, 176 Cal.App.3d at p. 1201, italics in original.) As the *Parnas* decision conflicts with *Pilot Life* and our decision in this case, it is disapproved. Similarly, *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Assn.* (1990) 221 Cal.App.3d Supp. 21 [270 Cal.Rptr. 608], which relies on Parnas in concluding that section 3111 is not preempted, is disapproved.

[6] In discussing the interrelationship of the "purports to regulate" and "relate to" language, the Ninth Circuit Court of Appeals stated, "[t]he narrower 'purports to regulate' test is included within the broader 'relates to' test. [Citations.] Thus a finding that a statute 'purports to regulate' an employee benefit plan necessarily includes a finding that it 'relates to' such a plan." (Fn. omitted. *Jones, supra*, 846 F.2d at p. 1218.)

compliance, Terotechnology stopped contributing. The unions and funds filed liens pursuant to Louisiana's Private Works Act against Borden's real property. The Fifth Circuit held that the Louisiana law, because it created an additional method of enforcing the funding requirements of employee benefit plans, was preempted under section 514(a) of ERISA.

(5) In reaching its conclusion, the *Iron Workers* court discussed the kinds of state laws that have been found to "relate to" employee benefit plans: "The state laws that have previously been found to be preempted by section 514(a) [of ERISA] because they 'relate' to ERISA plans fall into four categories[: (1)] laws that regulate the type of benefits or terms of ERISA plans[; (2)] laws that create reporting, disclosure, funding or vesting requirements for ERISA plans[; (3)] laws that provide rules for the calculation of the amount of benefits to be paid under ERISA plans[; and (4)] laws and common law rules that provide remedies for misconduct growing out of the administration of the ERISA plan. The principle underlying all of these decisions [preempting state laws] would appear to be that the state law is preempted by section 514(a) if the conduct sought to be regulated by the state law is 'part of the administration of an employee benefit plan': that is, *the state law is preempted if it regulates the matters regulated by ERISA: disclosure, funding, reporting, vesting, and enforcement of benefit plans.*" (*Iron Workers, supra,* 891 F.2d at p. 553, italics added.)

(1e) Section 3111 specifically purports to regulate employee benefit plans by providing an additional method of funding, a lien against real property, which is not provided by, and therefore is not allowed under, ERISA. In essence, section 3111 creates a new state cause of action for the collection of contributions owed to benefit plans and makes an additional entity liable for such contributions. Lien actions under section 3111, which are governed by state law, are not subject to the jurisdiction of the federal courts under ERISA. (*Carpenters Southern Cal. Admin. v. Majestic Housing*(9th Cir. 1984) 743 F.2d 1341, 1346.)[7]

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[7] In *Majestic Housing, supra,* the Ninth Circuit Court of Appeals considered the connection between section 3111 and ERISA. The court

ERISA preempts new state-law causes of action for the collection of contributions because, consistent with its goal of providing "appropriate sanctions and ready access to federal courts" (29 U.S.C. § 1001(b)), ERISA itself provides the remedies for the collection of contributions. Section 502(a) of ERISA (29 U.S.C. § SC 1132(a)) provides in part that "[a] civil action may be brought—. . . [¶] (3) by a participant, beneficiary, or *fiduciary* (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) *to enforce any provisions of this title or the terms of the plan.*" (29 U.S.C. § 1132(a)(3), italics added.)

Additionally, section 515 of ERISA (29 U.S.C. § 1145) provides: "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such an agreement." Hence, a participant, beneficiary or a fiduciary can bring an action under section 502(a) of ERISA (29 U.S.C. § 1132(a)) to enforce an employer's obligation under section 515 of ERISA (29 U.S.C. § 1145).[8]

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held that "[an] action to enforce [a] lien against Majestic's property [was] one under state, and not federal law. Consequently, the district court was without jurisdiction to rule on the motion for summary judgment." (*Id.* at p. 1346.)

[8] CSCAC argues that ERISA, as originally enacted in 1974, did not include a cause of action for the collection of benefit contributions and, hence, Congress could not have intended to preempt state law causes of action. The dissent adopts CSCAC's position, arguing further that we must determine the scope of ERISA's preemption provision as of 1974, without regard to subsequent amendments. (Dis. opn., *post*, pp. 1059-1060.)

The premise of these arguments is incorrect. Even in 1974 ERISA contained a cause of action to enforce its terms, section 502 (29 U.S.C. § 1132), and the remedies provided in section 502 are exclusive. With the addition of section 515 of ERISA (29 U.S.C. § 1145) in 1980, Congress sought only to streamline the process of collecting delinquent

(6) As the Court of Appeal in this case and the federal court in *Iron Workers, supra,* noted, *Pilot Life, supra,* establishes that the remedies in section 502 of ERISA are exclusive and displace state laws which purport to create parallel remedies. "[T]he detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme.... The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The ... carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted ... provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.' " (*Iron Workers, supra,* 891 F.2d at p. 555, quoting *Pilot Life, supra,* 481 U.S. at 54 [95 L.Ed.2d at pp. 52], italics in original.) "The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, ... would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) [of ERISA] could be supplemented or supplanted by varying state laws." (*Pilot Life, supra,* 481 U.S. at p. 56 [95 L.Ed.2d at p. 53].)[9]

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contributions exclusively under federal law. (See 126 Cong. Rec. 23029 (1980): "Recourse available under current law for collecting delinquent contributions is insufficient and unnecessarily cumbersome.... Federal pension law must permit trustees of plans to recover delinquent contributions efficaciously, and without regard to issues which might arise under labor-management relations law—other than 29 U.S.C. § 186.")

[9] Various amici curiae have asserted that section 3111 is saved from preemption by a statement in the legislative history of the Multi-Employer Pension Plan Amendments Act of 1980 (Pub.L. No. 96-364, 94 Stat. 1208 [hereafter Amendments]). We disagree. The Amendments, among other things, added section 515 of ERISA (29 U.S.C. § 1145) and revised section 502(g) of ERISA (29 U.S.C. § 1132(g)) pertaining to awards of attorney fees, costs, and liquidated damages in actions for delinquent contributions.

Commenting on the statutory provisions of section 502(g) of ERISA (29 U.S.C. § 1132(g)), the relevant House committee stated: "the Bill preempts any state or other law which would prevent the award of

(1f) In essence, CSCAC's action under section 3111 is a civil action by a fiduciary to enforce the provisions of ERISA with regard to employer contributions (i.e., § 502(a) of ERISA, 29 U.S.C. § 1132(a) & § 515 of ERISA, 29 U.S.C. § 1145) and to enforce the terms of the plan (i.e., the funding contributions required by the collective bargaining agreement). Like the Louisiana law in *Iron Workers, supra,* 891 F.2d 548, the state is attempting to "regulate" the terms and conditions of a pension plan through the use of a new cause of action, its lien laws. State laws, however, may not be used to supplement or supplant the civil enforcement scheme developed by ERISA. (See *Pilot Life, supra,* 481 U.S. at p. 56 [95 L.Ed.2d at p. 53].)

In summary, by providing an additional cause of action to those already provided by ERISA, section 3111, like the Louisiana law in *Iron Workers (supra,* 891 F.2d 548), "regulates" ERISA plans. This recognition further supports the conclusion that the section "relates to" ERISA plans and is, thus, preempted.

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reasonable attorney's fees, court costs or liquidated damages, or which would limit liquidated damages to an amount below the twenty percent level. However, the Bill does not preclude the award of liquidated damages in excess of the twenty percent level if an award of such a higher level of liquidated damages is permitted under state or other law. The Committee Amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multiemployer contributions." (H.R. No. 96-868, pt. 2, on H.R. No. 3909 of the House Com. on Ways and Means, 96th Cong., 2d Sess., pp. 3037-3038 (1980).)

Amici curiae argue that this section of the legislative history indicates that Congress did not intend to preempt state laws granting mechanics' lien rights to employee benefit plans. This reading of the House report is too broad. This single comment, pertaining to specific collateral remedies such as liquidated damages and attorney fees against delinquent employers, does not evidence a legislative intent to allow for remedies against delinquent employers that are not provided for in ERISA. Such an interpretation of this comment would vitiate the extensive legislative history of ERISA and the numerous United States Supreme Court statements regarding Congress's choice of certain enforcement provisions and the exclusion of all others.

Other Arguments

Invoking *Mackey v. Lanier Collections Agency & Serv., supra,* 486 U.S. 825 [100 L.Ed.2d 836, 108 S.Ct. 2182] (*Mackey*), CSCAC argues that section 3111 is not preempted because it is an "ancillary state collection remed[y]." In *Mackey,* a creditor sought to garnish money that an ERISA plan owed to its beneficiaries, who were the creditor's debtors. The *Mackey* court analyzed a Georgia antigarnishment statute and Georgia's general garnishment procedures. The court concluded that a Georgia statute that barred the garnishment of funds or benefits of an employee benefit plan subject to ERISA was preempted by ERISA. The court held that this antigarnishment statute expressly referred to, and solely applied to, ERISA plans, and that state laws which make reference to ERISA plans are laws that "relate to" those plans within the meaning of section 514(a) of ERISA (29 U.S.C. § 1144(a)). (*Mackey, supra,* 486 U.S. at p. 829 [100 L.Ed.2d at p. 843].) The ERISA plan beneficiaries in *Mackey* further argued that the entire Georgia garnishment procedure is preempted by ERISA. The United States Supreme Court held that Georgia's garnishment statute, as a generally applicable mechanism for the enforcement of judgments, was not preempted by ERISA. (*Id.* at p. 841 [100 L.Ed.2d at p. 851].)

Mackey's analysis of Georgia's general garnishment procedures does not save section 3111 from preemption. The decision concerned a third party action for enforcement of judgments against beneficiaries of an ERISA plan. ERISA does not contain remedial provisions for such actions. Largely for this reason, the United States Supreme Court concluded that "state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment won against an ERISA plan." (*Mackey, supra,* 486 U.S. at p. 834 [100 L.Ed.2d at p. 846].) The present case is not similar because ERISA expressly provides remedies for recovery of delinquent contributions to employee benefit plans.

Furthermore, in holding that the Georgia garnishment statute was not preempted, the high court noted that the statute "create[d] no substantive causes of action, nor new bases for relief, or any grounds for recovery; [it] does not create the rule of decision

in any case affixing liability." (*Mackey, supra*, 486 U.S. at p. 834, fn. 10 [100 L.Ed.2d at p. 847].) In contrast, California's trust fund lien statute does more than provide a new enforcement mechanism for collecting judgments; it creates new substantive rights. (Cf. *Iron Workers, supra*, 891 F.2d at p. 555.) Section 3111 permits the creditor (the trust fund) to enforce a debt (for outstanding fringe benefit contributions) not against the debtor (the defaulting employer), but against the property of a third party that is not a party to the collective bargaining agreement. Section 3111 gives a trust fund a right to a lien against the property of third parties, such as El Capitan, that the fund would not, and does not, have under ERISA. In the absence of section 3111, El Capitan would have no liability to the funds for the fringe benefit contributions. Therefore, section 3111 cannot be upheld under *Mackey* as it creates a new substantive right against the property of a third party that is not created by ERISA and, thus, goes beyond being a mere means of enforcing a judgment. (See *Iron Workers, supra*, 891 F.2d at p. 556.)

CSCAC next argues that section 3111 is not preempted because "[i]t regulates land rights, historically a power reserved to the state." (7) However, "[i]n order to avoid preemption, it is not sufficient that a state statute represent the exercise of traditional state power. [Citation.] A purported fundamental state interest is relevant only when there is an element of uncertainty as to whether the challenged state law falls within the scope of the ERISA preemption clause. . . . [¶] However, the strength of the state interest is of no consequence where the state law clearly 'purports to regulate' an employee benefit plan. 'In order to avoid being preempted, a state law in addition to being an exercise of traditional police powers must also *affect the plan "in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan."*' " (*Jones, supra*, 846 F.2d at pp. 1220-1221, citations omitted, italics added.) Section 3111 does not affect ERISA plans merely in a "tenuous, remote, or peripheral" manner; instead, it has a substantive effect. The section makes an additional entity liable to plans for contributions. (See *Iron Workers, supra*, 891 F.2d at p. 556.)

Lastly, CSCAC argues that section 3111 "provides an effective and necessary remedy for employee benefit plans." That this may be so is irrelevant. The United States Supreme Court has specifically held that even state laws which may help to effectuate ERISA'S underlying purposes are still preempted. (*Mackey, supra*, 486 U.S. at pp. 829-830 [100 L.Ed.2d at p. 844].) In *Mackey*, the United States Supreme Court explained that " '[t]he pre-emption provision [of § 514(a)]. . . . displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements.' *Metropolitan Life Ins. Co. v. Massachusetts*, [471 U.S. 724, 739]. . . . *Legislative 'good intentions' do not save a state law within the broad pre-emptive scope of § 514(a).*" (*Mackey, supra*, 486 U.S. at pp. 829-830 [100 L.Ed.2d at p. 844], italics added.) Thus, the fact that the trust fund lien procedure may provide a remedy useful to CSCAC is irrelevant.

Disposition

For the foregoing reasons, we conclude that Civil Code section 3111 is preempted by ERISA. The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Kennard, J., Arabian, J., and Baxter, J., concurred.

BROUSSARD, J.—I dissent. In *Mackey v. Lanier Collection Agency & Service* (1988) 486 U.S. 825 [100 L.Ed.2d 836, 108 S.Ct. 2182] (hereafter *Mackey*), the United States Supreme Court adopted two fundamental rules for the construction and application of the express preemption provision (29 U.S.C. § 1144(a)) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.). The majority violate both of them. *Mackey* also sets out three areas of state law which are not preempted. All three are applicable in the instant case. The majority ignore two areas and unduly limit the third. The majority opinion attempts to dispose of *Mackey*as a case which merely deals with garnishment. However, it is clear that the express statements and the reasoning of the high court are not

limited to garnishment but provide broad instruction as to the state laws which are not preempted.

While it is, of course, proper to emphasize the broad language used by the United States Supreme Court in describing the preemption clause of ERISA, we may not stop there, but must also recognize the limitations on preemption. And when we recognize the correct function of a mechanics lien and the relationship of the lien provided by Civil Code section 3111 to employee compensation, it is clear under *Mackey* that we may not discriminate against ERISA plans by denying them liens given to others similarly situated, that we may not discriminate against ERISA plan members in providing remedies for recovery of compensation, that Congress did not intend to preempt state law liens, including mechanics liens, and that, although probably not essential to the decision in the instant case, Congress intended to permit certain state law actions by ERISA plans to recover delinquent employer contributions.

I. The Preemption Clause and Its Expansive Nature

The preemption clause of ERISA is very broad and encompassing, and although it could be read as preempting the application of state law in any case in which an ERISA plan is a party, it is settled that state law can be applied to some cases involving ERISA plans and that we look to congressional intent in determining which state laws may be applied. The clause preempts "any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan. . . ." (29 U.S.C. § 1144(a), italics added.) "The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." (29 U.S.C. § 1144(c)(1).)

The United States Supreme Court has characterized the provision as "deliberately expansive" (*Pilot Life Ins. Co. v. Dedeaux* (1986) 481 U.S. 41, 46 [95 L.Ed.2d 39, 46, 107 S.Ct. 1549]), and as establishing "as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA." (*FMC Corp. v. Holliday* (1990) 498 U.S. ____, ____ [112 L.Ed.2d 356, 364, 111 S.Ct. 403, 407].) A state law relates to a benefit plan, in the normal sense of the

phrase, " 'if it has a connection with or reference to such a plan.' " (*Pilot Life Ins. Co. v. Dedeaux, supra*, 481 U.S. 41, 47 [95 L.Ed.2d 39, 48].)

The language of the preemption provision and of the United States Supreme Court cases is so broad that it could be understood as meaning that state law could never be applied in litigation involving an ERISA plan, except in cases coming within the express exemption of the preemption clause for cases involving state laws regulating insurance, banking or securities. However, such a broad interpretation of the provision and the cases would be improper.

" '[T]he question whether a certain state action is pre-empted by federal law is one of congressional intent. "The purpose of Congress is the ultimate touchstone." ' [Citations.] To discern Congress' intent we examine the explicit statutory language and the structure and purpose of the statute. (See *FMC Corp. v. Holliday*, 498 U.S. ____, ____, 111 S.Ct. 403, 407, 112 L.Ed.2d 356 (1990), citing *Shaw v. Delta Air Lines, Inc., supra*, 463 U.S., at 95, 103 S.Ct., at 2898-99)." (*Ingersoll-Rand Co. v. McClendon* (1990) ____ U.S. ____, ____ [112 L.Ed.2d 474, 483, 111 S.Ct. 478, 482].)

In the recent case of *Ingersoll-Rand*, the high court addressed the purpose of the preemption clause. In that case a fired employee claimed that he was wrongfully terminated for the principal reason that his pension was about to vest after nearly 10 years of employment and that the employer sought to avoid the expense of the pension. The court explained the purpose of the preemption provision as follows: The preemption provision "was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government. Otherwise, the inefficiencies created could work to the detriment of plan beneficiaries. *FMC Corp.*, 498 U.S. at ____, 111 S. Ct., at 408 (citing *Fort Halifax*, 482 U.S., at 10-11, 107 S.Ct., at 2216-17); *Shaw*, 463 U.S. at 105, and n. 25, 103 S.Ct., at 2904, and n. 25.) Allowing state based actions like the one at issue here would subject plans and plan sponsors to burdens not

unlike those that Congress sought to foreclose through [the preemption provision]. Particularly disruptive is the potential for conflict in substantive law. It is foreseeable that state courts, exercising their common law powers, might develop different substantive standards applicable to the same employer conduct, requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." (*Ingersoll-Rand Co. v. McClendon, supra*, 498 U.S. ____, ____ [112 L.Ed.2d 474, 486, 111 S.Ct. 478, 484].)

II. Congressional Intent and the Preemption Clause

The majority, in applying ERISA's express preemption clause, rely upon 29 United States Code section 1145, which requires that employers who have agreed to make contributions to a multiemployer plan shall make those contributions to the extent not inconsistent with law. This provision provides federal causes of action to recover employer delinquencies. However, the section was not part of ERISA as originally enacted and for this reason it furnishes no support for the view that the preemption clause in ERISA preempted such causes of action. In *Mackey*, the United States Supreme Court made clear that in interpreting the preemption clause of ERISA, the congressional intent to be determined is the intent of the Congress that enacted the preemption clause and not the intent of subsequent Congresses. "[W]e must look at the language of ERISA and its structure, to determine the intent of the Congress that originally enacted the provision in question. 'It is the intent of the Congress that enacted [the section] . . . that controls.' *Teamsters v. United States*, 431 U.S. 324, 354, n. 39 (1977)." (*Mackey, supra*, 486 U.S. at p. 840 [100 L.Ed.2d 851, 108 S.Ct. at p.2191.)

The provisions of 29 United States Code section 1145 were added to ERISA in 1980 as part of the Multiemployer Pension Plan Amendments Act. Since it was not part of ERISA as originally enacted, it is improper for the majority to rely upon it in construing the express preemption provision.

Moreover, even if it were proper to consider the Multiemployer Pension Plan Amendments Act of 1980 in construing the express

preemption provision, the entire 1980 act and its legislative history must be considered, and when this is done it must be concluded that Congress sought to retain state law actions to recover delinquencies and only intended a limited preemption of state law governing actions to recover delinquencies. As will be pointed out later in this opinion in connection with implied preemption, it is clear that Congress, when it enacted the Multiemployer Pension Plan Amendments Act of 1980, *expressly* provided for the application of state law to actions for recovery of delinquencies in certain circumstances (29 U.S.C.; § 1132(g)), and that the legislative history of the act shows that Congress intended the preemption of state law only where it limited recovery against the employer to an amount less than federal law provided. The majority ignore 29 United States Code section 1132(g) and the legislative history dealing with preemption.

Accordingly, at the outset, we must conclude that the provisions of 29 United States Code section 1145 may not be considered in construing the preemption clause or to show an intent on the part of the Congress to preempt state laws permitting recovery for employer delinquencies equal to or greater than that permitted by federal law.

III. Laws Specifically Designed to Affect ERISA Plans

In *Mackey*, the high court stated that it has "virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted" under the preemption clause. (*Mackey, supra*, 486 U.S. at p. 829 [100 L.Ed.2d at p. 844, 108 S.Ct. at p. 2185.]) On the basis of this rule the high court invalidated a Georgia statute that exempted ERISA plans from the state's garnishment law. (*Ibid.*) The majority in their bottom line—by exempting ERISA plans from mechanics lien laws—violate the rule against special treatment of ERISA plans.

As pointed out above, the express preemption provision applies to "any and all State laws." That term applies not merely to statutes but also to "decisions . . . having the effect of law of any State." (29 U.S.C. § 1144(c)(1).) Accordingly, just as it is ordinarily improper for the Legislature to adopt statutes specifi-

cally designed to affect ERISA plans, it is improper for this court through its decisions to establish laws specifically designed to affect ERISA plans.

The ultimate effect of the majority opinion is to subject ERISA plans and members of ERISA plans to special treatment. Civil Code section 3110 grants mechanics liens to numerous specifically identified persons for services rendered when such persons have been unpaid and have contributed to an improvement. Civil Code section 3111 provides the same mechanics lien for ERISA plans which administer fringe benefits like health insurance and pension benefits. By permitting those enumerated in section 3110 to obtain liens but denying liens to ERISA plans, the majority single out ERISA plans for special treatment. The payments to the ERISA plan sought to be recovered are part of the compensation of those who furnish labor for the improvement. The net effect of the state law established by the majority is that employees who are not members of ERISA plans obtain liens for their entire unpaid compensation, whereas those who are members and receive part of their compensation through ERISA plans obtain a lien for only part of their compensation.

The majority seek to justify the special treatment of ERISA plans by asserting that, unlike those mentioned in Civil Code section 3110, ERISA plans do not furnish labor or materials to the construction project. (Maj. opn., *ante*, p. 1049.) However, as I demonstrate, the ERISA claim is part of the compensation for the worker and must be treated the same as the other compensation.

The cases have recognized that the claims of the ERISA plans are part of the employee's compensation and must be treated the same as the compensation. In *Plumber's Local 458 v. H. Immel, Inc.* (1989) 151 Wis.2d 233, [445 N.W.2d 43, 44-45], the mechanics lien statute provided for a lien for "any person furnishing labor," and the court concluded that the lien statute could not be restricted to hourly wages but included claims by ERISA plans for funds for fringe benefits.

Similarly, in the closely analogous situation presented in *United States v. Carter* (1956) 353 U.S. 210 [1 L.Ed.2d 776, 77 S.Ct.

793], the issue was the liability of a surety to fringe benefit funds on a payment bond furnished by a contractor, as required by the Miller Act (40 U.S.C. § 269a et seq.), for the protection of persons furnishing labor or materials for the construction of federal buildings. The statute provided that every "person who has furnished labor or material in the work provided for in such contract . . . shall have the right to sue on such payment bond. . . for the sum justly due him." (40 U.S.C. § 270b(a). The court stated: "The Miller Act represents a congressional effort to protect persons supplying labor and material for the construction of federal public buildings in lieu of the protection they might receive under state statutes with respect to the construction of nonfederal buildings." (353 U.S. at p. 216 [1 L.Ed.2d at p. 782].) Among the protection under state statutes, obviously, is the mechanics lien statute applying to private buildings; thus, the issue is clearly analogous. Notwithstanding that the statute was phrased in terms "furnished labor," the court concluded that the fringe benefit funds could maintain an action on the bond. The court reasoned in part that the "contributions were a part of the compensation for the work to be done by [the] employees" and that trustees "stand in the shoes of the employees and are entitled to enforce their rights." (*Id.*, at pp. 217-218, 220 [1 L.Ed.2d at pp. 783-784]; see *Morrison-Knudsen Constr. Co. v. Director, OWCP* (1982) 461 U.S. 624, 631 [76 L.Ed.2d 194, 200, 103 S.Ct. 2045].)

A similar view is found in our code sections dealing with stop notices and state payment bonds (the state Miller Act counterpart), which treat claims by laborers and ERISA plans as being the same thing. (See Civ. Code, §§ 3181, 3247.)

Our court has long recognized the basic principle that claims for fringe benefits are part of the compensation and must be treated accordingly as to creditors' rights. Thus in *Dunlop v. Tremayne* (1965) 62 Cal.2d 427 [42 Cal.Rptr. 438, 398 P.2d 774, 17 A.L.R.3d 368], we held that under the preference statute applicable to assignments for the benefit of creditors, Code of Civil Procedure section 1204, health, welfare, and pension contributions would be included under the term "wages." The court reasoned: "The terms and conditions of the payments were

ascertained by the employers and representatives of the employees in wage negotiations, as part of a total wage package. Payments are made by the employer not as a gift but in consideration of the services of the employees. In an economic sense they are wages." (62 Cal.2d at p. 431.)

We cannot ignore the practical effect of our decisions. ERISA plans and others who have unpaid claims based on construction projects are usually unpaid because there are not enough funds to go around. To permit architects, engineers, surveyors, mechanics, laborers and others enumerated in Civil Code Section 3110 to obtain liens while denying liens to ERISA plans is to make ERISA plans second-class creditors. The effect of the preference will ordinarily mean that section 3110 creditors will have a preference and will receive all or part of their claims while ERISA plans will receive none. Making the plans second-class creditors flies in the face of ERISA's express policy to protect the interest of participants in the plans (29 U.S.C. § 1001(b), (c)) and, more particularly, ERISA's express policy "to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans" and "to provide a financially self-sufficient program for the guarantee of employer benefits under multiemployer plans." (29 U.S.C. § 1001a(c)(3), (4).)

The express preemption clause in ERISA is directed at state law generally, including both statutory and decisional law. Whether special treatment of ERISA plans is accomplished by a statutory exemption from general law requirements as in *Mackey*, or by a decision of the court permitting application of a specific provision to everyone by enumerating them individually but leaving out ERISA plans, the effect is the same. The special treatment is preempted and, because the majority at the bottom line provide for special treatment, the law enunciated in their decision is contrary to federal law and is thus preempted. Moreover, the decision discriminates against union employees belonging to multiemployer ERISA plans by denying them lien rights for the full amount of their compensation—while allowing non-ERISA employees liens for all of their compensation.

IV. State Laws Not Preempted

Congress has not preempted state lien laws.

Mackey establishes three classes of state laws that are not preempted.

The first class is those cases where Congress has provided for the application of state law. (*Mackey, supra,* 486 U.S. at p. 832 [100 L.Ed.2d at pp. 845-846, 108 S.Ct. at pp. 2186-2187].) As will appear in part VI of this opinion, Congress has expressly provided for the use of state law to enforce the duty to make payments to ERISA plans. "ERISA plans may be sued in a second type of civil action, as well. These cases—lawsuits against ERISA plans for run-of-the-mill claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan—are relatively commonplace." (486 U.S. at p. 833 [100 L.Ed.2d at p. 846, 108 S.Ct. at p. 2187], fn. omitted.) As will also appear, mechanics liens are such run-of-the-mill claims.

The third class was the one before the high court, garnishment. Because it was directly involved in *Mackey* it is treated first. The reasoning of the high court is much broader than garnishment used to collect a judgment, and it is improper to treat this part of the *Mackey* opinion, as the majority do (maj. opn., *ante,* at pp. 1054-1055), as merely establishing a garnishment exception to the preemption clause. The reasoning is applicable not merely to garnishment but to all enforcement mechanisms for collecting money judgments and also prejudgment mechanisms to secure the collection of debts, including liens such as the mechanics lien before us. And, while *Mackey* obviously involved a suit against an ERISA plan, it is apparent the same view should apply when the plan sues.

In *Mackey,* the court reasoned: "ERISA does not provide an enforcement mechanism for collecting judgments won in either of these two types of actions. Thus, while section [1132(d)], the 'sue and be sued' provision, contemplates execution of judgments won against plans in civil actions, it does not provide mechanisms to do so. Moreover, Federal Rule of Civil Procedure 69(a), which would apply when either type of civil suit discussed above is brought against an ERISA plan in federal court, defers to state

law to provide methods for collecting judgments. [Citation.] Consequently, state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment won against an ERISA plan. If attachment of ERISA plan funds does not 'relate to' an ERISA plan in any of these circumstances, we do not see how respondent's proposed garnishment order would do so." (486 U.S. at pp. 833-834 [100 L.Ed.2d at p. 846, 108 S.Ct. at p. 2187], fn. omitted.)

Federal Rules of Civil Procedure, rule 69(a) provides that proceedings "supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held." It follows that parties seeking to obtain a judgment lien must do so on the basis of state law. Since ERISA does not provide for judgment liens and, so far as I am aware, the federal government has not adopted a recording act for federal real property judgment liens, the proceedings to obtain and enforce judgment liens thus are entirely matters of state law even where the judgment is a federal judgment.

Generally, proceedings to establish and enforce liens are run-of-the-mill state law proceedings. The preliminary 20-day notice of intent to file a mechanics lien (Civ. Code, §§ 3097, 3114) is probably the most often served legal document in our state. Similarly, mortgages and deeds of trust are probably among the most frequently recorded documents in this state, and, of course, the purpose of the recording is to establish the lien. The reconveyance to cancel the mortgage or deed of trust lien is recorded with equal frequency.

Furthermore, to conclude that state lien laws are preempted when ERISA plans are involved means that millions, perhaps billions, of dollars invested by ERISA pension plans in notes secured by mortgages and deeds of trust are jeopardized. Those liens, like mechanics liens, provide an "additional cause of action" in the property of a fourth party, a party other than the employer, employee or the plan, and ERISA does not provide a method to enforce mortgages. To suggest that a Congress which adopted a comprehensive law to protect the interests of participants in

employee benefit plans (29 U.S.C. § 1001(b)) intended to preempt state lien laws strains credulity.

Generally, state law prejudgment mechanisms for securing the ultimate payment of debts are utilized by the federal courts. While Federal Rules of Civil Procedure, rule 69(a) provides for the adoption of state law methods to obtain collection after judgment, rule 64 provides for the adoption of prejudgment state law methods to secure payment of debts. The rule provides that the remedies thus available "include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action." Under this provision it is clear that the builders of a building for an ERISA plan and their workers should be able to secure and enforce in federal court (when jurisdiction is proper) a mechanics lien arising against the property under state law. Likewise, ERISA plans under this provision should be entitled to enforce state law liens, including mechanics liens.

No distinction may be made as to liens arising from the provisions of ERISA plans and other liens in favor or against ERISA plans. In *Mackey,* the Solicitor General argued that while other types of garnishment may be permitted with respect to ERISA plans, the court should not permit garnishment when it will affect whether benefits will be paid to a plan participant. ERISA expressly provides that a participant or beneficiary may bring an action to recover benefits due, to enforce rights under the plan, to clarify rights under the plan and to obtain equitable relief (29 U.S.C. § 1132(a)(1)(B), (a)(3)), and *Pilot Life Ins. Co. v. Dedeaux, supra,* 481 U.S. 41 (hereafter *Pilot Life*), held that ERISA preempted state law causes of action by a participant or beneficiary to enforce his or her rights.

The *Mackey* court rejected the Solicitor General's argument on the ground that the preemption clause did not permit the distinction—it could not be held that the garnishment did not "relate to" the plan when fourth parties were involved but did "relate to" the plan when the rights of plan participants were involved. (486 U.S. at p. 836 [100 L.Ed.2d at p. 848, 108 S.Ct. at pp. 2188-2189.)

Similarly, here, it may not be concluded that mechanics liens do not "relate to" the plan when laborers or suppliers seek to establish liens against an office building built by a plan, but "relate to" the plan when it seeks to recover employer contributions.

The majority argue that Civil Code section 3111 creates new substantive rights permitting the plan to enforce a debt against property of a fourth party who is not a party to the collective bargaining agreement. (Maj. opn., *ante,* p. 1055) However, the lien does not create personal liability of the owner. It has long been recognized that the lien of the mechanic, artisan and supplier is equitable because those parties have created the very property upon which the lien attaches. (*Tuttle v. Montford* (1857) 7 Cal. 358, 360; *Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 825-827 [132 Cal.Rptr. 477, 553 P.2d 637].) Obviously, return of the materials or labor to the unpaid supplier or laborer is not a viable option, and the law's recognition of the unpaid supplier's and laborer's contributions to the improvement does not create a debt or personal liability on the part of the owner, but only an interest in the property they helped create.

The fact that the mechanics lien may provide a priority against fourth parties, so that if the debt is unpaid the lienor may proceed to the detriment of fourth parties, does not mean that a personal cause of action is created. The effect of a lien against property is to give the lienor priority against some other claimants to the property, such as owners, subsequent mortgagees, judgment lienors or purchasers. In other words, the fact that a lien may prejudice fourth party claimants is not unique to mechanics liens but is common to all liens, and the effect in all cases is to give the lienor an actionable claim against the property affecting fourth parties with lesser priority. Only when the employer and the owner are the same, such as a specification builder, will the owner be individually liable, and then his liability exists even though the plan does not seek to enforce the lien. As we have seen, the ERISA plan merely stands in the shoes of the workers and seeks recovery of their compensation, so its lien also is based upon the creation of the very property upon which the lien attaches.

The fact that California has created a cause of action limited to property rights of a fourth party does not mean there is preemption. The Georgia garnishment statute upheld in *Mackey* created a cause of action in favor of a fourth party against ERISA plans. ERISA is fundamentally concerned with the relationship between the members of the plan, employers, and the plan and its fiduciary, and hardly any of its provisions are concerned with the rights and duties of fourth parties.

I conclude that ERISA, which does not preempt state laws providing mechanisms to collect judgments, also does not preempt state laws providing prejudgment mechanisms to secure the payment of debts such as liens, and that this is true even if Congress has preempted causes of action to collect the debt.

V. The Cause of Action to Recover Employer Payments

Since the instant case involves a state law lien which is not preempted whether or not the related cause of action to collect the debt is preempted, it does not seem necessary to reach the issue whether ERISA's preemption clause preempts actions to enforce the agreed payment. Nevertheless, I will deal with the issue because the majority address it. My conclusion is that ERISA, as originally enacted, did not provide a federal cause of action for plans to recover a money judgment against delinquent employers and that, if state law causes of action were found preempted, the fundamental congressional purpose of protecting employee benefits would be defeated.

As pointed out above, in interpreting the preemption clause we look to the intent of the Congress that enacted the clause and consider the structure of ERISA. In a comprehensive statute to regulate ERISA plans there are obviously three areas requiring regulation, namely, the relationship between the employer and the ERISA plan, the operation of the plan in using the assets, and the relationship between the plan and its members and beneficiaries.

The civil enforcement section of ERISA, as originally enacted, provided for a federal cause of action by a participant or beneficiary to recover benefits due from an ERISA plan, to enforce rights under the plan terms, and to clarify future rights. (29 U.S.C. § 1132(a)(1)(B).) A federal cause of action was also provided

for actions by the Secretary of Labor, participant, beneficiary, or fiduciary against fiduciaries for breach of duty by a fiduciary. (29 U.S.C. § 1132(a)(2).) There was a general provision to enforce the terms of the plan, but that provision was limited to equitable relief. Subparagraph (3) of 29 United States Code section 1132(a) provided for an action "by a participant, beneficiary or fiduciary (A) to *enjoin* any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate *equitable* relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." (Italics added.)

It is apparent that subparagraph (3) of 29 United States Code section 1132(a) only provides for equitable proceedings. Because subparagraph (1) expressly provides for causes of action to recover benefits due to participants and beneficiaries, and because they are mentioned along with fiduciaries in subparagraph (3), it is clear that the latter subparagraph does not authorize an action at law to recover a money judgment against delinquent employers, and that as originally enacted Congress did not provide for such a federal cause of action. The fact that in 1980 Congress found it necessary to add provisions for a money judgment against a delinquent employer (29 U.S.C. §§ 1145, 1132(g)) lends support to the conclusion that, as originally enacted, ERISA did not provide for such an action.

Once it is recognized that Congress did not provide a federal cause of action to recover delinquencies in ERISA as originally enacted, we must conclude that Congress did not intend to preempt such causes of action under state law. A conclusion that there was no action to collect employer delinquencies under either federal or state law would simply defeat the fundamental purpose of ERISA to protect employee benefit rights. (29 U.S.C. § 1001.) We cannot attribute such an intent to Congress.

VI. Implied Preemption of Causes of Action for Delinquencies

Even though the express preemption clause of ERISA did not preempt state law causes of action to recover money judgments

for employer delinquencies, the question remains whether the 1980 amendments to ERISA in themselves established an intent to preempt the state law causes of action. Although the existence of a detailed regulatory scheme does not by itself imply preemption, special features of a law may do so, including that the state law provides a parallel scheme of federal rights. (See *Ingersoll-Rand Co. v. McClendon, supra*, 498 U.S. ____, ____ [112 L.Ed.2d 474, 486-487, 111 S.Ct. 478, 484-486].)

The 1980 amendments included 29 United States Code section 1145, which imposed a federal duty upon employers to make their contributions to a multiemployer plan, and 29 United States Code section 1132(g), which provided the damages to be awarded in actions to enforce section 1145. However, section 1132(g)(2)(C) expressly provides for application of state law in certain circumstances, and the legislative history of the 1980 enactment makes clear that the 1980 amendments were intended to retain state law causes of action and to preempt state law only insofar as it provided for lesser damages than those provided by Congress.

The fact that Congress has provided for damages to be fixed in part under state law contemplates state law causes of action to determine what are state law damages. The legislative history of the amendments makes clear that this is exactly what Congress contemplated.

The staff report of the Senate Committee of Labor and Human Relations states that the Multiemployer Pension Plan Amendments Act Of 1980 was intended "to promote the prompt payment of contributions and assist plans in recovering the cost incurred in connection with delinquencies." (Staff Rep. of the Sen. Com. on Labor and Human Relations, Sen. No. 1076: Multiemployer Pension Plan Amendments Act of 1980, 96th Cong., 2d Sess., p. 44 (1980) Sen. Labor Com. Print.) Congress recognized that the instability of the construction industry caused funds to accrue benefit obligations without collecting sufficient contribution to fund those benefits. (H.R.Rep. No. 96-869(I), 2d Sess., p. 51 (1980), reprinted in 1980 U.S. Code Cong. & Admin. News, pp. 2918, 2921.) "The Bill preempts any state or other law which would prevent the award of reasonable attorney's fees, court costs or liquidated damages, or which would limit liquidated

damages to an amount below the 20 percent level. *However, the Bill does not preclude the award of liquidated damages in excess of the 20 percent level where an award of such a higher level of liquidated damages is permitted under applicable State or other law. The Committee amendment does not change any other type of remedy permitted under State or Federal law with respect to delinquent multiemployer plan contributions.*" (1980 U.S. Code Cong. & Admin. News, *supra*, at pp. 3037-3038, italics added.)

It is thus clear that in 1980 Congress intended to retain state causes of action and did not intend to preempt state causes of action to recover delinquencies except to the extent that such causes of action precluded an award of damages provided by the 1980 amendments.

VII. No Additional Remedies Language

In *Pilot Life*, the high court stated: "In sum, the detailed provisions of [29 United States Code § 1132(a)] set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for *prompt and fair claims settlement procedures* against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan *participants and beneficiaries* were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in [29 United States Code § 1132(a)] as finally enacted . . . provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly." (481 U.S. at p. 54 [95 L.Ed.2d at p. 52], first and second italics added, third italics in original.)

In *Pilot Life*, it was held that a state law action for breach of the covenant of good faith and fair dealing brought by a plan participant for delay in paying benefits was preempted.

The majority rely upon the above quoted language in arguing that a state law cause of action to enforce claims for employer delinquencies is preempted. However, the language must be read

in context, and within its own limitations. To read the quoted language broadly as meaning that states may not provide *any* remedies in cases involving ERISA plans would be *directly contrary* to the subsequent *Mackey* case, decided shortly after *Pilot Life*. *Mackey* held that state law garnishment and run-of-the-mill causes of action were not preempted. It is apparent that the high court is not reading the language so broadly as to generally preempt state law remedies involving fourth parties since neither the majority nor the dissent in *Mackey* saw fit to even discuss the language. By its own terms *Pilot Life*'s language is limited to cases involving claims by participants and beneficiaries, and as pointed out above, 29 United States Code section 1132(a) provides both a federal cause of action for damages and equitable relief in such cases. By. contrast, the section as originally enacted provided only equitable relief where a plan sued to enforce the employer's promise to pay. There were not six carefully crafted remedies to sustain the rights of the plans. Additionally, the predicate for preemption is that Congress has provided remedies, but as pointed out above, Congress has not provided mechanisms, like liens, for collection of debts whether before or after judgment. I conclude that the broad language is inapplicable here because it is limited to actions by participants and beneficiaries, and to situations where Congress has provided remedies.

Iron Workers Pension Fund v. Terotechnology (5th Cir. 1990) 891 F.2d 548, 553, also relied upon by the majority (maj. opn., *ante*, p. 1053) is largely based on a broad reading of the no-additional-remedy language of *Pilot Life*. The court did not recognize that, as so read, *Pilot Life* would be in direct conflict with the later *Mackey* decision or that, even assuming that Congress provided a cause of action to collect delinquencies, it did not provide mechanisms to collect the amounts found due.

There also is no merit in the claim that Civil Code section 3111 is preempted because it imposes funding requirements. It does not establish the level of funding. It is no more a funding statute than statutes providing for attachment, garnishment, judgment liens, or mortgage liens are funding statutes.

VIII. Conclusion

I conclude that Civil Code section 3111 is not preempted by ERISA. California law, whether due to statute or judicial decision, is preempted by ERISA if it singles out ERISA plans for special treatment. ERISA plans, in seeking the agreed payments, stand in the shoes of their members furnishing labor for improvements, and by treating the plans differently than other compensation claims, including those of nonmembers, the majority opinion, not the Legislature, provides special treatment for ERISA plans and their members.

Although the sweep of the preemption clause in ERISA is broad, it does not preempt state lien laws or other pretrial mechanisms for securing payment of debts. In addition, although the point probably need not be decided, the absence of any federal cause of action at law to recover a money judgment for employer delinquencies precludes finding that Congress intended, when the preemption clause was adopted, to preempt such state causes of action because such preemption would mean that there was no cause of action, state or federal, to recover payments promised to ERISA plans. Given the fundamental, expressed purpose of Congress to protect employee benefits, an intent to preclude all such actions cannot be attributed to Congress. In the Multiemployer Pension Plan Amendments Act of 1980, Congress sought to add new remedies to permit collection of employer delinquencies and sought to preempt state law remedies only insofar as they precluded the full recovery provided by federal law. The congressional history shows that Congress believed there were state remedies to recover delinquencies and intended to preserve them.

Civil Code section 3111 has not been preempted, and the judgment of the Court of Appeal should be reversed.

Mosk, J., concurred.

Appendix B

Not To Be Published In Official Reports

In the Court of Appeal
of the State of California

Fifth Appellate District

Carpenters Southern California Administrative Corporation,
Plaintiff and Appellant,

v.

El Capitan Development Company,
Defendant and Respondent.

5 Civil No. F006233

(Super. Ct. No. 185215)

[Filed Mar 20 1987]

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Henry E. Bianchi, Judge.

Cox, Castle & Nicholson, James P. Watson, Law Offices of Charles P. Scully, Inc., Donald C. Carroll, De Carlo & Connor, John T. De Carlo, Law Offices of Richard A. Brownstein, Karen L. Holliday, for Plaintiff and Appellant.

Littler, Mendelson, Fastiff & Tichy, Karen E. Ford and Major Williams, Jr., for Defendant and Respondent.

Appellants, Carpenters Southern California Administrative Corporation (hereafter CSCAC) filed a complaint in Kern County Superior Court against El Capitan Development Company (hereafter El Capitan) and numerous Does, with the purpose of foreclosing on mechanics' liens. CSCAC had filed the mechanics' liens in order to collect fringe benefit contributions allegedly due its members pursuant to a collective bargaining agreement entered into with a subcontractor. During the term of the agreement, CSCAC members who were carpenters coming

under the collective bargaining agreement were employed by the subcontractor, who in turn worked on El Capitan's property. The subcontractor allegedly failed to pay fringe benefit contributions in excess of $121,000 under the terms of the collective bargaining agreement.

El Capitan demurred. In the demurrer, it was argued the complaint failed to state a cause of action because the California statutory lien procedure upon which it was based (Civ. Code, § 3111)[1] was preempted by the Employee Retirement Income Security Act of 1974, as amended (hereafter ERISA). (See 29 U.S.C. 1144.) The demurrer was granted with leave to amend. Plaintiffs declined to amend (purportedly upon agreement by the parties. Judgment was entered on August 8, 1985. CSCAC timely appeals.

FACTS

Both parties have attempted to abbreviate the facts since the issue presented is ultimately one of law and many of the facts are undisputed.

CSCAC is the administrator and assignee of rights involving various multi-employer trust funds. The carpenters' trust funds are such multi-employer benefit trusts. They are organized pursuant to section 302, subsection (c)(5) of the Labor Management Relations Act of 1947. (See 29 U.S.C. § 18, subsec. (c)(5).) As a result, CSCAC is a fiduciary, as defined by ERISA, and the trust funds in question are employee pension benefit plans or welfare plans within the meaning of ERISA. (See 29 U.S.C. § 1002, subsecs. (1), (2)(A), and (21)(A).)

The trust funds in question are funded through employer contributions for covered employees. In this case, those employees were members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (hereafter Union). Due to its fiduciary relationship with the unions, and in its role as administrator of the trust, CSCAC is under a duty to collect

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[1] All statutory references are to the Civil Code unless otherwise indicated.

contributions from employers who have failed to voluntarily make the required payments to the trust.

A condominium project was constructed on property in Bakersfield owned by El Capitan. The general contractor on the project was Grupe Construction. Grupe subcontracted with Pacific Southwestern Framing for part of the framing on the condominium project.

In the complaint, CSCAC alleged John Hall Enterprises, the subcontractor with whom the collective bargain agreement in question was made, was an entity related to Pacific Southwestern Framing. As a result, Pacific Southwestern Framing was bound by the agreement with Hall, and therefore responsible for making the contributions to the trust. However, neither El Capitan nor Pacific Southwestern Framing were signatories to the collective bargaining agreement.

Since the unpaid contributions represent work performed on El Capitan property, CSCAC asserted the position in its complaint that mechanics' liens could be placed upon the real property pursuant to section 3111. The section is part of the statutory scheme in California for allowing trust funds such as those in the present case to place liens on real property in an amount equal to the unpaid fringe benefit contributions under collective bargaining agreements. (See, e.g., §§ 3111, 3111.5, 304, 3114-3116, 3123, 3128-3140, 3143-3154.) Mechanics' liens in this action were timely recorded by CSCAC on the El Capitan property, and foreclosure was sought in this action as a means of collecting the trust fund contributions still owed.

IS APPLICATION OF SECTION 3111 IN THE INSTANT CASE PREEMPTED BY ERISA?

DISCUSSION

Section 3111 provides:

> "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of

a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

The pertinent portions of ERISA Provide:

"[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." (29 U.S.C. § 1144, subsec. (a); ERISA § 514, subsec. (a).)

"The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

"The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." (29 U.S.C. § 1144, subsecs. (c)(1) & (2); ERISA § 514, subsecs. (1) & (2).)

According to El Capitan, section 3111 is preempted by the above provisions of ERISA. The two-prong test for preemption in this area was recently expressed by the United States Court of Appeals for the Ninth Circuit:

"The U.S. Supreme Court cases addressing the issue of preemption of state statutes by § 514 have begun with the question of whether the challenged state statute 'related to' employee benefit plans within the meaning of § 514(a). *E.g. Metropolitan Life Ins. Co. v. Massachusetts*, 105 S.Ct. at 2389; *Shaw v. Delta Airlines, Inc.*, 468 U.S. at 98-101, 103 S.Ct. AT 2900-2902. The Supreme Court in *Shaw v. Delta Air Lines* discussed the 'relates to' provision of ERISA, in holding that the New York Human Rights and Disability Benefits Law 'related to' an ERISA plan. The Court stated that '[a] law "relates to" an employee benefit plan, in the

normal sense of the phrase, if it has a connection with or reference to such a plan.' *Shaw v. Delta Air Lines, Inc.* 463 U.S. at 96-97, 103 S.Ct. at 2899-2900. The Court applied this definition to the laws in question in *Shaw*, and held that the laws 'prohibit[ed] employers from structuring their employee benefit plans in a manner that discriminates on the basis of pregnancy,' and required employers to pay employees specific benefits. These requirements 'related to' plans and, thus, called into play the preemption clause. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 96-97, 103 S.Ct. at 2899-2900. The Court stated that Congress meant to use the statutory words in their broadest sense. *Id.* at 97, 103 S.Ct. at 2900.

". . . . . .

"In this Circuit, there is also a requirement that the state law be a rule which 'purports to regulate' ERISA plans. *Martori Bros. Distributor v. James-Massengale*, 781 F.2d 1349 (9th Cir.1986). *Martori* founder this second prong in *Lane v. Goren*, 743 F.2d 1337 (9th Cir. 1984), which held that the California Fair Employment and Housing Act, as applied to employees of a Trust which administered an ERISA plan, did not regulate the Plan as a plan, but only as any other employer would be regulated." (*United Food & Commercial Workers v. Pacyga* (9th Cir. 1986) 801 F.2d 1157, 1160.)

The state law in *Pacyga* was found to be one which "purports to regulate the Plan as a plan, inasmuch as it disallows a specific provision of the Plan, rather than regulating the activities of the Plan that are common to other groups." (*Ibid.*)

The question of preemption was vigorously researched and briefed, both in the trial court and in the briefs before us. However, in fairness to the court below, subsequent to its granting of the demurrer and entry of judgment, Division One of the First Appellate District handed down its opinion in *Carpenters Health & Welfare Trust Fund v. Parnas Corp.* (1986) 176 Cal.App.3d 1196.

The *Parnas* court reached the opposite result as that reached by the trial court in the instant case: section 3111 is not preempted by ERISA.

CSCAC did not discuss *Parnas* in its opening brief since, again, the case was filed after the opening brief. El Capitan, on the other hand, takes issue with the case and urges us not to follow it. In their reply brief, CSCAC argues that *Parnas* was correctly decided and should be followed. We agree.

El Capitan launches a long multi-pronged attack for preemption. However, we conclude the *Parnas* decision was correctly decided and that we should follow it. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.)

Although we have differed with other appellate courts when convinced they are wrong (e.g., *Price v. Superior Court* (1986) 186 Cal.App.3d 156), we do so only when a strong showing is made that the case is wrong and deserves a different appellate opinion and possible attention from a higher court. In this case we have studied El Capitan's criticisms of the *Parnas* rationale and conclude *Parnas* made the proper distinction between federal substantive law relating to covered plans and state remedies to enforce the rights arising from such plans.

The judgment is reversed. Respondent to recover costs of appeal.

WOOLPERT
Acting P.J.

WE CONCUR:

BALLANTYNE
J.

VARTABEDIAN
J.*

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* Assigned by the Chairperson of the Judicial Council.

Appendix C

Order Granting Review

After Judgment by the Court of Appeal

Fifth District, Division One, No. F006233-S000772

In the Supreme Court of the State of California

In Bank

Carpenters Southern California Administrative Corporation,
Appellant

v.

El Capitan Development Company,
Respondent

[Filed Jun 18 1987]

Respondent's petition for review GRANTED. The cause is transferred to the Court of Appeal, Fifth Appellate District, for reconsideration in light of Pilot Life Insurance Company v. Dedeaux (1987) 107 S. Ct. 1549.

The request for an order directing publication of the opinion is denied.

Lucas
Chief Justice

Panelli
Associate Justice

Arguelles
Associate Justice

Eagleson
Associate Justice

Kaufman
Associate Justice

Associate Justice

Associate Justice

Appendix D

Certified for Publication

In the Court of Appeal of the State of California

Fifth Appellate District

Carpenters Southern California Administrative Corporation,
Plaintiff and Appellant,

v.

El Capitan Development Company,
Defendant and Respondent.

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5 Civil No. F008840

(Super. Ct. No. 185215)

OPINION

[Filed Jan 11 1988]

APPEAL from a judgment of the Superior Court of Kern County. Henry E. Bianchi, Judge.

Cox, Castle & Nicholson, James P. Watson, Law Offices of Charles P. Scully, Inc., Donald C. Carroll, De Carlo & Connor, John T. De Carlo, Law Offices of Richard A. Brownstein, Karen L. Holliday, for Plaintiff and Appellant.

Littler, Mendelson, Fastiff & Tichy, Karen E. Ford and Major Williams, Jr., for Defendant and Respondent.

Appellant, Carpenters Southern California Administrative Corporation (CSCAC), filed a complaint in Kern County Superior Court against El Capitan Development Company (El Capitan) and numerous Does, to foreclose on mechanics' liens. CSCAC had filed the mechanics' liens in order to collect fringe-benefit contributions allegedly due its members pursuant to its collective bargaining agreement with a subcontractor. During the term of the agreement, CSCAC members, who were carpenters covered by the collective bargaining agreement, were employed by the subcontractor, who in turn performed work on El Capitan's

Property. The subcontractor allegedly failed to pay fringe benefit contributions, in excess of $121,000, due under the terms of the collective bargaining agreement.

El Capitan demurred. It argued the complaint failed to state a cause of action because the California statutory lien procedure upon which it was based (Civ. Code, § 3111)[1] was Preempted by the Employee Retirement Income Security Act of 1974, as amended (ERISA). (See 29 U.S.C. 1144.) The demurrer was granted with leave to amend. Plaintiffs declined to amend (purportedly upon agreement by the parties.) Judgment was entered on August 8, 1985. CSCAC timely appealed.

We reversed the judgment. However, the California Supreme Court granted respondent's petition for review and transferred the matter to us for reconsideration in light of a subsequently decided case, *Pilot Life Insurance Company v. Dedeaux* (1987) 107 S.Ct. 1549 (hereinafter *Pilot Life*). We do so, and conclude the recent decision requires us to affirm the judgment on the basis of federal preemption.

FACTS

CSCAC is the administrator and assignee of rights involving various multi-employer trust funds, including the carpenters' trust funds. They are organized pursuant to section 302. subsection (c)(5) of the Labor Management Relations Act of 1947. (See 29 U.S.C. § 18, subsec. (c)(5).) As a result, CSCAC is a fiduciary, as defined by ERISA, and the trust funds in question are employee pension benefit plans or welfare Plans within the meaning of ERISA. (See 29 U.S.C. § 1002, subsecs. (1), (2)(A), and (21)(A).)

These trust funds are funded through employer contributions for covered employees. In this case, those employees were members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (Union). Due to its fiduciary relationship with the unions, and in its role as administrator of the

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[1] All statutory references are to the Civil Code unless otherwise indicated.

trust, CSCAC is under a duty to collect contributions from employers who have failed to voluntarily make the required Payments to the trust.

A condominium project was constructed on property in Bakersfield owned by El Capitan. The general contractor on the Project was Grupe Construction. Grupe subcontracted with Pacific Southwestern Framing for part of the framing on the condominium project.

In the complaint, CSCAC alleged John Hall Enterprises, the subcontractor with whom the collective bargain agreement was made, was an entity related to Pacific Southwestern Framing. As a result, Pacific Southwestern Framing was bound by the agreement with Hall, and therefore responsible for making the contributions to the trust. However, neither El Capitan nor Pacific Southwestern Framing signed the collective bargaining agreement.

Since the unpaid contributions represent work performed on El Capitan property, CSCAC alleged mechanics' liens could be placed upon the real property pursuant to section 3111. The section is part of California's statutory scheme which permits trust-fund liens on real property in amounts equal to the fringe benefit contributions owed under collective bargaining agreements. (See, e.g., §§ 3111, 3111.5, 304, 3114-3116, 3123, 3128-3140, 3143-3154.) Mechanics' liens in this action were timely recorded by CSCAC on the El Capitan property, and foreclosure was sought in this action as a means of collecting the trust fund contributions still owed.

APPLICATION OF SECTION 3111 VERSUS PREEMPTION BY ERISA.

Section 3111 provides:

> "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which Payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on Particular real property shall have a

lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

The pertinent portions of ERISA Provide:

"[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." (29 U.S.C. § 1144, subsec. (a); ERISA § 514, subsec. (a).)

"The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

"The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." (29 U.S.C. § 1144, subsecs. (c)(1) & (2); ERISA § 514, subsecs. (1) & (2).)

According to El Capitan, section 3111 is preempted by the above quoted provisions of ERISA. The question of preemption was vigorously researched and briefed in the trial court. Subsequent to the trial court's granting of the demurrer and entry of judgment, Division One of the First Appellate District filed its opinion in *Carpenters Health & Welfare Trust Fund v. Parnas Corp.* (1986) 176 Cal. App.3d 1196. The *Parnas* court reached the opposite result as that reached by the trial court in this case. According to *Parnas*, section 3111 is not preempted by ERISA.

El Capitan took issue with the *Parnas* case and urged it not be followed by this court. In reply, CSCAC argued *Parnas* was correctly decided and should be followed. We agreed with CSCAC, applying *Parnas* and *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.

We studied El Capitan's criticisms of the *Parnas* rationale and concluded *Parnas* made the proper distinction between federal

substantive law relating to covered plans and state remedies to enforce the rights arising from such plans.

In *Pilot Life*, the issue before the court was phrased by Justice O'Connor as follows:

> "This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U.S.C. § 1001 *et seq.*, preempts state common law tort and contract actions asserting improper processing of a claim for benefits under an insured employee benefit plan." (*Pilot Life, supra*, 107 S.Ct. at pp. 1550-1551.)

The employee, Dedeaux, received a work-related injury. His employer had an employee disability insurance plan through Pilot Life. Dedeaux sought permanent disability status; nevertheless, his benefits were terminated after two years. Subsequently they were reinstated and terminated several times over another three-year period. (*Id.* at p. 1551.)

Ultimately, Dedeaux filed a diversity action in federal court. He alleged three causes of action based upon state law (tortious breach of contract; breach of fiduciary duties; fraud in the inducement), rather than any cause of action available to him under ERISA. (*Id.* at p. 1551.)

Pilot Life's motion for summary judgment was granted after the district court found all the state claims to be preempted. The fifth circuit reversed, relying upon *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 1724. Eventually, the Supreme Court reversed, finding preemption. (*Pilot Life, supra*, at pp. 1551-1558.)

Although the court in *Pilot Life* was concerned with state causes of action, it discussed remedies at some length. The opinion cannot be read without concluding the high court was purposely broad in its view of preemption. We quote a few such passages which combine to preclude us from looking for distinctions between substantive law and remedies.

> "To summarize the pure mechanics of the provisions quoted above: [29 U.S.C. § 1144, subsecs. (a) and

(b)(2)(A)] If a state law 'relate[s] to . . . employee benefit plan[s],' it is pre-empted. § 514(a). . . .

" '[T]he question whether a certain state action is pre-empted by federal law is one of congressional intent. " 'The Purpose of Congress is the ultimate touchstone.' " ' [Citations.] We have observed in the past that the express pre-emption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.' [Citations.]" *Pilot Life, supra*, at p. 1552.)

In its discussion of Dedeaux's state law bad-faith-claim, the court continued:

"The Solicitor General, for the United States as *amicus curiae*, argues that Congress clearly expressed an intent that the civil enforcement provisions of ERISA § 502(a) be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress. Brief for United States as *Amicus Curiae* 18-19. We agree. The conclusion that § 502(a) was intended to be exclusive is supported, first, by the language and structure of the civil enforcement provisions, and second, by legislative history in which Congress declared that the pre-emptive force of § 502(a) was modeled on the exclusive remedy provided by § 301 of the Labor-Management Relations Act (LMRA), 61 Stat. 156, 29 U.S.C. § 185.

"The civil enforcement scheme of § 502(a) is one of the essential tools for accomplishing the stated purposes of ERISA. . . .

" . . . . . .

"In sum, the detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy

> choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.' (*Russell, supra*, at 146, 105 S.Ct., at 3093 (emphasis in original)." (*Pilot Life, supra*, 107 S.Ct. at pp. 1555-1556, fn. omitted."

Still later, the court stated:

> "The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, *indeed the entire comparison of ERISA's § 502(a) to § 301 of the LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws.*" (*Id.* at p. 1558.)

Although a state law providing for mechanics' liens is a special statutory collection alternative, that remedy cannot be divorced from the substantive contractual rights which create the debt. To be effective, the lien claim depends upon the validity and consequences of an agreement of some sort. In this instance, a labor agreement is the subject matter. Failure of one party to the Plan to make contributions results in the denial of benefits to the others. Federal remedies are provided. Mechanics' lien rights are omitted.

Along this same line of thinking is the very recent appellate court decision in *Cairy v. Superior Court* (1987) 192 Cal.App.3d 840. In *Cairy* the defendant, Cairy, was charged with violation of Labor Code section 227: willful, and with intent to defraud, *failure to make payment to a pension fund as required by a collective bargaining agreement.* (*Id.* at p. 842.) The defendant's demurrer to the information on the grounds of preemption was overruled. After concluding ERISA preempted Labor Code section 227, the Court of Appeal issued a peremptory writ of

mandate directing the lower court to vacate its order overruling the demurrer, and instructed the court to make a new order sustaining the demurrer. (*Id.* at pp. 845-846.)

The *Cairy* court uses an expansive approach to preemption consistent with *Pilot Life*:

> "Section 227 'regulates' the terms end conditions of employee benefit plans to the common sense meaning of that word. 'Regulate' means 'to control or direct according to a rule.' (American Heritage Dict. (1976) p. 1096.) It is axiomatic, therefore, the power to regulate includes the power to enforce. (See, e.g., *Pac. Legal Found. v. State Energy Resources, etc.* (9th Cir. 1981) 659 F.2d 903, 926.) Here the state is attempting directly to regulate the terms and conditions of a pension plan by using its criminal law to obtain compliance with those terms end conditions (i.e., to 'control or direct' an employer's behavior in relation to terms and conditions of the pension plan). Thus, section 227 is preempted by ERISA unless it falls within the exception for 'generally applicable' criminal laws of the state." (*Cairy v. Superior Court, supra*, 192 Cal.App.3d at p. 843.)

We agree a similar interpretation is required in our case. The state is attempting to "regulate" the terms and conditions of a pension plan through the use of its mechanics' lien laws. (See also *Lembo v. Texaco, Inc.* (1987) 194 Cal.App.3d 531.) The state's mechanics' lien laws may not be used to supplement or supplant the civil enforcement scheme developed under ERISA. (*Pilot Life, supra*, 107 S.Ct. at p. 1558.)

The judgment is affirmed. Respondent to recover costs of appeal.

WOOLPERT
Acting P.J.

WE CONCUR:

BALLANTYNE
J.

VARTABEDIAN
J.*

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* Assigned by the Chairperson of the Judicial Council.

Appendix E

Relevant Statutory Provisions

Civil Code § 3111. Trust fund lien under labor agreement

For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

Civil Code § 3110. Persons entitled to lien; agent of owner

Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor of furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams, or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-subcontractor, architect, building, or other person having charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

Section 514(a) of the Employee Retirement Income Security Act, 29 U.S.C. § 1144(a) Other Laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supercede any and all State laws insofar as they may not or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

Section 514(c) of the Employee Retirement Income Security Act, 29 U.S.C. § 1144(e) Other Laws

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Section 515 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1145 Delinquent Contributions

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such statement.

Section 502(a) of the Employee Retirement Income Security Act, 29 U.S.C. § 1132(a) Civil Enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary, or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to inforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

Section 502(g) of the Employee Retirement Income Security Act of 1974, As Amended, 29 U.S.C. § 1132(g) Civil Enforcement

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter other than an action described in paragraph (2) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan—

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

Section 301(a) of the Labor and Management Relations Act of 1947, As Amended, 29 U.S.C. § 18(a), Suits by and against labor organizations

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(8)

No. 91-480

In The

Supreme Court of the United States

October Term, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

Petition For A Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. WHETHER THE CALIFORNIA MECHANIC'S LIEN PROCEDURE EMBODIED IN CALIFORNIA CIVIL CODE SECTION 3111, WHICH CREATES AN ADDITIONAL STATE CAUSE OF ACTION FOR THE COLLECTION OF CONTRIBUTIONS OWED TO EMPLOYEE BENEFIT PLANS, "RELATES TO" AN EMPLOYEE BENEFIT PLAN AND IS CONSEQUENTLY PREEMPTED BY ERISA.

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STATUTES AND CODES

No. 91-480

In The

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October Term, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

Petition For A Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

Respondent El Capitan Development Company ("El Capitan") respectfully requests this Court to deny the writ of certiorari prayed for by Petitioner Carpenters Southern California Administrative Corporation ("CSCAC").

I

OPINIONS BELOW

The relevant opinions below are set forth at Page 1 and Appendices A, B, C and D of Petitioner Carpenters

Southern California Administrative Corporation's Petition for a Writ of Certiorari to the California Supreme Court ("Petition").

II

JURISDICTION

The relevant jurisdictional provisions are set forth at Petition, page 2. This opposition is timely filed under 28 U.S.C. § 2101 and Rule 15.2 of this Court.

III

STATUTORY PROVISIONS

The relevant statutory provisions are set forth at Petition, page 3 and Appendix E.

IV

STATEMENT OF THE CASE

Consistent with well-established ERISA preemption analysis, the California Supreme Court has properly held that the trust fund mechanic's lien created under California Civil Code Section 3111 is preempted by Section 514(a), 29 U.S.C. § 1144(a), of the Employee Retirement Income Security Act of 1974 ("ERISA").

California Civil Code Section 3111 creates a funding mechanism for employee pension and welfare benefit plans by permitting such plans to obtain a lien on real property in an amount equal to the fringe benefit contributions which are claimed to be due the trust funds under collective bargaining agreements. The mechanic's liens authorized by Section 3111 are specifically designed

to affect employee benefit plans. Section 3111 expressly refers to "trust fund[s] established pursuant to a collective bargaining agreement" and provides to such funds a mechanic's lien remedy not provided by Congress.

This action was instituted by CSCAC to foreclose liens filed pursuant to the California Civil Code upon property owned by El Capitan. El Capitan used the services of a company called Pacific Southwest Framing to perform carpentry work on property located in Bakersfield, California. CSCAC sought to foreclose a lien on the property based on fringe benefit contributions it alleges are due from a company called John Hall Enterprises, Inc. The complaint relies upon a collective bargaining agreement executed on behalf of John Hall Enterprises, Inc. and contends that John Hall Enterprises and Pacific Southwest Framing, which performed work on El Capitan's property, are a single employer. El Capitan has never been a signatory to a labor agreement with the Carpenters Union.

After numerous procedural hurdles, the California Supreme Court issued its decision on June 20, 1991. The court held that Section 3111 was preempted by ERISA. Its decision was consistent with the opinions of numerous federal and state courts which have addressed similar issues. In a well-reasoned opinion, the California Supreme Court adhered to the clearly defined preemption principles set forth in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549 (1987). Consequently, the petition for writ of certiorari must be denied.

V

REASONS FOR DENYING THE WRIT

A. Federal And State Courts Have Uniformly Held That State Mechanic's Lien Statutes Are Preempted by ERISA.

Contrary to Petitioner's assertion, federal and state trial and appellate courts have uniformly held, since this Court's decision in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S. Ct. 1549 (1987), that state mechanic's lien statutes which supplement or supplant the civil enforcement scheme developed under ERISA are preempted.[1] *See e.g., Sturgis v. Miller*, ___ F.2d ___ (U.S.C.A. No. 90-15054 (9th Cir.) (Sept. 3, 1991)); *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir. 1990), *cert. denied*, ___ U.S. ___, 110 S. Ct. 3272 (1990); *McCoy v. Massachusetts Institute of Technology*, 760 F. Supp. 12 (D. Mass. 1991); *Edwards v. Bethlehem Steel Corp.*, 554 N.E.2d 833 (Ind. App. 1990); *Prestridge v. Shinault*, 552 So.2d 643 (La. Ct. App. 1989); *Plumbers Local No. 458 Holiday Vacation Fund v. Howard Immel, Inc.*, 151 Wis. 2d 233, 445 N.W.2d 43 (1989).

---

[1] In its argument asserting that there is a conflict among the courts regarding the application of ERISA Section 514(a), 29 U.S.C. § 1144(a), to trust fund mechanic's lien statutes, Petitioner relies almost exclusively on decisions rendered prior to *Pilot Life*. In light of the expansive interpretation given to the preemptive effect of Section 514(a) in *Pilot Life*, however, these cases are of limited precedential value. Furthermore, the only post-*Pilot Life* decision cited by Petitioner, *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association*, 221 Cal. App. 3d 21 (1990), is completely devoid of any discussion or rationale supporting its holding and was explicitly disapproved by the California Supreme Court.

Each of these decisions has provided clear guidance regarding the preemptive effect of ERISA on state mechanic's lien statutes almost identical to the trust fund lien procedure created by California Civil Code Section 3111. In each instance, the courts have held that in light of *Pilot Life* and its progeny, they were compelled to conclude that the mechanic's lien statutes were preempted by ERISA.

For example, in *Sturgis v. Miller*, ___ F.2d ___ (U.S.C.A. No. 90-15054 (9th Cir.) (Sept. 3, 1991)), the Ninth Circuit, in reviewing the same statute under consideration in the instant action, held that Section 3111 was preempted by ERISA. The court based its holding on the fact that Section 3111 "relates to" ERISA. The court stated:

> [S]ection 3111 contains a clear reference to and connection with ERISA. It singles out employee benefit plans for the specific purpose of according them lien rights on real property to collect delinquent employer contributions. . . . There can be no doubt that Section 3111 accords ERISA plans a unique procedural benefit by conferring upon them special mechanic lien rights to collect delinquent contributions. Accordingly, ERISA preempts Section 3111.

Similarly, in *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir. 1990) *cert. denied*, ___ U.S. ___, 110 S.Ct. 3272 (1990), the Fifth Circuit held that a Louisiana statute permitting employee benefit plans and fiduciaries to assert a claim for amounts owed under collective bargaining agreements against owners of property on which an employer had worked, was preempted by ERISA.

In *Iron Workers*, an employee benefit trust sued a contractor who had failed to make contributions to a benefit plan as required by a collective bargaining agreement. The trust also sought to enforce liens which it had filed under the Louisiana Private Works Act, against the owner of the property on which the contractor had performed the work.

Based on the reasoning of *Pilot Life*, the court held that the statute was preempted by ERISA. It stated that:

> By its terms the Private Works Act relates to employee benefit plans. It also purports to regulate such plans, because it provides a supplemental enforcement mechanism to those provided by Congress. It does not specifically require that certain terms be included in a plan, but it does purport to regulate the conditions under which the terms of a plan can be enforced by creating an additional entity that can be liable for contributions to the plan.

Iron Workers, 891 F.2d at 553.

The court concluded that because ERISA's civil enforcement provisions specifically provide for a cause of action by a fiduciary to enforce the provisions of ERISA with regard to employer contributions, 29 U.S.C. § 1132(a)(3) (ERISA § 502(a)(3)), the Private Works Act was preempted as an attempt to supplement the exclusive civil remedies provided by ERISA. *Iron Workers*, 891 F.2d at 555.

A similar conclusion was reached in *McCoy v. Massachusetts Institute of Technology*, 760 F.Supp. 12 (D. Mass. 1991), where a federal district court held that a Massachusetts mechanic's lien law was preempted by ERISA.

Following the guidance of *Pilot Life* regarding the "expansive sweep of the preemption clause," the court reasoned that because the mechanic's lien statute "creates a whole new class of liable parties – property owners" against whom trust funds could seek a remedy, the statute was preempted by ERISA. *McCoy*, 760 F.Supp. at 16.

In addition to the opinions rendered by the federal courts, the decisions of numerous state courts also illustrate the uniformity with which the judiciary has addressed the issue presently under consideration. In *Prestridge v. Shinault*, 552 So. 2d 643 (La. Ct. App. 1989), a trust fund sought to enforce liens against a property owner under the same Louisiana Public Works Statute at issue in *Iron Workers*. The court reached a similar conclusion regarding preemption as was reached in *Iron Workers*. The court's decision preempting the statute was based on its "understanding of ERISA's preemptive force and [its] interpretation of *Pilot Life*."

The *Prestridge* court stated that "the lien claim depends on the validity and consequences of a collective bargaining agreement that establishes an ERISA benefit plan. The failure of one party to make contributions results in the denial of benefits to the other. Exclusive federal remedies are provided, and these do not include state-law laborers lien rights against nonparties to the agreement." Thus, the state law was preempted by ERISA. *Prestridge*, 552 So. 2d at 647-48.

In *Edwards v. Bethlehem Steel Corp.* 554 N.E.2d 833 (Ind. App. 1990), an Indiana Court of Appeals similarly held that a state mechanic's lien statute was preempted by ERISA. The statute provided that liens could be levied

on the interest of the owner of land on which laborers had performed work to the extent of the value of claims for labor performed or material provided. In deciding whether the mechanic's lien statute was preempted by ERISA as it applies to the fringe benefits provided in the laborer's collective bargaining agreement, the court stated that the laborer's were attempting to use the mechanic's lien statute to enforce conditions of their fringe benefits.

The court held that the Indiana mechanic's lien statute was preempted because it related to ERISA. It reasoned that:

> If laborers were allowed to recover wages and fringe benefits from [the owner of the property] then [the employer] and the fringe benefit funds would be affected; they would either have no further obligation to pay laborers, or laborers could receive a double payment windfall, provided [their employer] or the funds paid [the] laborers at some future time.

Edwards, 554 N.E. 2d at 835-36.

A recent Wisconsin Court of Appeals decision further demonstrates the uniformity with which courts approach this preemption issue. In *Plumbers Local No. 458 Holiday Vacation Fund v. Immel, Inc.*, 151 Wis. 2d 233, 445 N.W.2d 43 (1989), the court compared a Wisconsin construction lien law with the California trust fund lien procedure at issue in the instant case.

In determining that preemption was proper only under the California statute, the court noted significant differences between the two statutes. The factors which

proved decisive in favor of preemption were that the California statute applies to the collection of unpaid ERISA accounts, specifically refers to ERISA obligations, and creates a remedy for collection of ERISA obligations that does not exist under the federal act. Although finding that preemption of the Wisconsin statute was not proper, the court reasoned that under existing federal law, the California trust fund lien procedure clearly should be preempted.

These decisions make it abundantly clear that federal and state courts have uniformly interpreted the preemption provisions of ERISA when analyzing state mechanic's lien statutes. Consistent with this Court's holdings, the California Supreme Court and all other courts addressing the issue, have broadly interpreted the term "relate to" and concluded that trust fund mechanic's lien laws such as California Civil Code Section 3111 are preempted by ERISA. *Pilot Life*, 481 U.S. at 47-48. Because there is no conflict among the courts regarding the preemptive effect of ERISA on state mechanic's lien laws, the petition for Writ of Certiorari should be denied.

B. The Decision Of The California Supreme Court Is Consistent With Preemption Analysis As Set Forth In *Pilot Life Insurance Co. v. Dedeaux.*[2]

In *Pilot Life* it was established that the remedies provided for in Section 502 of ERISA, 29 U.S.C. § 1132, are

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[2] In support of its argument that the California Supreme Court's decision ignores the framework for preemption analysis developed by this Court, CSCAC relies heavily on *Fort*

(Continued on following page)

exclusive and displace state laws which purport to create parallel remedies. The *Pilot Life* court stated that the detailed provisions of Section 502(a) "set forth a comprehensive civil enforcement scheme. . . . The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA plan participants and beneficiaries were free to obtain remedies under state law, that Congress rejected in ERISA. The six carefully integrated civil enforcement provisions found in Section 502 of the statute as finally enacted . . . provides strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly." The Court went on to reason that "the expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop . . . would make little sense if the remedies available to ERISA participants and beneficiaries under Section 502(a) could be supplemented or supplanted by varying state laws." *Pilot Life*, 481 U.S. at 56.

The California Supreme Court closely followed this preemption analysis established by *Pilot Life*. It held that

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(Continued from previous page)

Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 107 S.Ct. 2211 (1987). The decision in *Fort Halifax* did not, however, turn upon the definition and scope of the phrase "relate[s] to" as used in Section 514(a). Rather, the critical focus of *Fort Halifax* was the issue of what is to be defined as a *plan* for purposes of ERISA preemption. Because it is undisputed that CSCAC are employee benefit plans subject to the provisions of ERISA and that Section 3111 applies to employee benefit plans, the reasoning of *Fort Halifax* is irrelevant to the issues presented by this case.

CSCAC's action under Section 3111 is a civil action by a fiduciary to enforce the provisions of ERISA with regard to employer contributions and to enforce the terms of the plan. Because such a cause of action exists under Section 502(a) of ERISA, 29 U.S.C. § 1132(a), and Section 515 of ERISA, 29 U.S.C. § 1145, California Civil Code Section 3111 provided an additional cause of action to those already provided by ERISA. Consequently, California Civil Code Section 3111 was preempted.

Contrary to Petitioner's arguments, this Court was extremely clear in *Pilot Life* regarding the scope of ERISA preemption. Where ERISA provides a remedy under Section 502, any and all state causes of action and remedies are preempted. The California Supreme Court's decision, rather than ignore the framework for preemption analysis developed by this Court, completely embodies and accurately applies it in holding that Civil Code Section 3111 is preempted.

C. The California Mechanic's Lien Statute Is Preempted Regardless Of Its Underlying Legislative Intent.

Throughout its Petition for Writ of Certiorari, Petitioner bases its position on arguments which are completely inconsistent with and totally ignore the guidance of this Court in the area of ERISA preemption. CSCAC argues that this Court cannot hold that California Civil Code Section 3111 is preempted because such a ruling would "disrupt the California statutory scheme for protecting the wages and benefits of workmen." Petition at 20. CSCAC supports this proposition by asserting that

"[t]he interest of the State of California in providing a comprehensive remedy to protect the wage package, including fringe benefits, of workers who perform construction services would be gravely eroded if Civil Code Section 3111 is nullified by the preemptive force of federal law." Petition at 21.

This court has long held that legislative "good intentions" do not save a state law from preemption. *Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825, 108 S. Ct. 2182 (1988). Merely because Section 3111 may have been intended to provide a comprehensive remedy to protect the fringe benefits of workers, does not save it from preemption. As this Court has noted, "the preemption provision [of § 514(a)] . . . displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739.

In sum, the fact that a California statutory scheme for protecting the wages and benefits of workmen may be disrupted by preemption of California Civil Code Section 3111, is completely irrelevant to preemption analysis.

VI

CONCLUSION

For all the foregoing reasons, El Capitan respectfully requests that this Petition for Writ of Certiorari be denied.

DATED: October 16, 1991

Respectfully submitted,

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No. 91-480

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

vs.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

MOTION TO FILE BRIEF AS AMICUS CURIAE; BRIEF OF AMICUS CURIAE, CALIFORNIA IRONWORKERS FIELD PENSION TRUST, CALIFORNIA IRONWORKERS FIELD WELFARE PLAN, CALIFORNIA IRONWORKERS FIELD VACATION TRUST FUND, CALIFORNIA FIELD IRONWORKERS APPRENTICESHIP TRAINING AND JOURNEYMAN RETRAINING TRUST, CALIFORNIA FIELD IRONWORKERS ANNUITY TRUST FUND, AND CALIFORNIA IRONWORKERS FIELD ADMINISTRATIVE TRUST IN SUPPORT OF PETITION OF CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

vs.

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Respondent.

MOTION OF THE CALIFORNIA IRONWORKERS FIELD PENSION TRUST, CALIFORNIA IRONWORKERS FIELD WELFARE PLAN, CALIFORNIA IRONWORKERS FIELD VACATION TRUST FUND, CALIFORNIA FIELD IRONWORKERS APPRENTICESHIP TRAINING AND JOURNEYMAN RETRAINING TRUST, CALIFORNIA FIELD IRONWORKERS ANNUITY TRUST FUND, AND CALIFORNIA IRONWORKERS FIELD ADMINISTRATIVE TRUST TO FILE BRIEF AS AMICUS CURIAE

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

California Ironworkers Field Pension Trust, California Ironworkers Field Welfare Plan, California Ironworkers Field Vacation Trust Fund, California Field Ironworkers Apprenticeship Training and Journeyman Retraining Trust, California Field Ironworkers Annuity Trust Fund, and California Ironworkers Field Administrative Trust ("Iron Workers Trusts") hereby move the Court, pursuant to Supreme Court Rule 37.2, for leave to file the accompanying brief as amicus curiae in support of the Petition for Writ of Certiorari filed on September 16, 1991 in USSC No. 91-480.

In support of the motion, the Iron Workers Trusts state as follows:

1. This motion is necessitated by the failure, upon request, of Respondent El Capitan Development Company, to give written consent to the filing of a brief

by the amicus applicant herein. Petitioner Carpenters Southern California Administrative Corporation, which administers the Carpenters Trust Funds ("Carpenters Trusts") has consented to the filing of the accompanying brief.

2. The Iron Workers Trusts, like the Carpenters Trusts, are employee benefit plans governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1001, et seq. ("ERISA").

3. The Iron Workers Trusts have about 10,000 participants working in a three state area. Hours reported are about 970,000 hrs./month over the last 12 month period and the fringe package is $11.18 an hour. There are 947 employers who presently report to the trusts in a three state area.

4. The question to be argued in the brief is as follows: Does ERISA

Section 514 [29 U.S.C. Section 1144] pre-empt California Civil Code Section 3111?

5. The Iron Workers Trusts have relied upon California Civil Code Section 3111 as a traditional state law mechanic's lien remedy for recovery of delinquent employer contributions in numerous cases involving substantial sums of money. At the time of the decision in the present case, the Iron Workers Trusts had seven unsatisfied mechanic's liens which totalled $213,042.17. At one time in 1989, the Iron Workers Trusts were pursuing 83 separate job findings on a single employer and as a result of Civil Code Section 3111, all job findings were recovered.

6. The Iron Workers Trusts share a common and ongoing interest with the Carpenters Trusts in the viability and use of Civil Code Section 3111 as a state law

means of collecting delinquent employer contributions. The Iron Workers Trusts contend, like the Carpenters Trusts, that Civil Code Section 3111 is not preempted by ERISA, for the reasons stated in the accompanying brief as amicus curiae.

7. The amicus is in a unique position to advise the Court because it is also the appellant in another case before the Ninth Circuit, entitled M. C. Sturgis, et al. v. Herman Miller, Inc., et al., No. 90-15054, which involves the same issue as to whether Civil Code Section 3111 is preempted by ERISA. The amicus has filed a petition for rehearing in the Ninth Circuit case and is awaiting a ruling on that petition.

WHEREFORE, it is respectfully moved and requested that the Iron Workers Trusts be granted leave to file the accompanying brief as amicus curiae.

DATED: October 14, 1991

Respectfully submitted,

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PATRICK M. HEVESY

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Attorneys for
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No. 91-480

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

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vs.

EL CAPITAL DEVELOPMENT COMPANY,

Respondent.

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BRIEF OF AMICUS CURIAE

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

California Ironworkers Field Pension Trust, California Ironworkers Field Welfare Plan, California Ironworkers Field Vacation Trust Fund, California Field Ironworkers Apprenticeship Training and Journeyman Retraining Trust, California Field Ironworkers Annuity Trust Fund, and California Ironworkers Field Administrative Trust, amici curiae herein, respectfully urge the granting of the petition for a writ of certiorari filed on September 16, 1991, in order to review the judgment of the Supreme Court of the State of California entered in this case on June 20, 1991.

INTERESTS OF THE AMICI CURIAE

Each of the parties appearing as amici curiae ("Iron Workers Trusts") is an employee benefit plan governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1001, et seq. ("ERISA"). In this and other respects, the Iron Workers Trusts share common circumstances and interests with petitioner Carpenters Southern California Administrative Corporation, which administers the Carpenters Trust Funds ("Carpenters Trusts"). The Iron Workers Trusts have relied upon California Civil Code Section 3111 as a traditional state law mechanic's lien remedy for recover of delinquent employer contributions in numerous cases involving substantial sums of money. In 1989, the Iron Workers Trusts pursued 83

separate job findings on a single employer and as a result of Civil Code Section 3111, all job findings were recovered.

STATEMENT OF THE ISSUE

Does ERISA Section 514 [29 U.S.C. Section 1144] preempt California Civil Code Section 3111, which provides employee benefit plans a traditional mechanic's lien against real property as a remedy for collection of unpaid employee fringe benefit contributions incurred in improving the property?

ARGUMENT

THE STATUTORY MECHANIC'S LIEN REMEDIES AFFORDED TRUST FUNDS UNDER CIVIL CODE SECTION 3111 ARE NOT PREEMPTED BY ERISA.

The state mechanic's lien remedies afforded ERISA trust funds are not affected by the preemption clause contained in ERISA

Section 514(a) [29 U.S.C. Section 1144(a)]. ERISA preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . ." 29 U.S.C. Section 1144(a). The California mechanic's lien remedies set forth in Civil Code Section 3111 do not "relate to" a plan within the meaning of that section. Hence, ERISA does not preempt those state remedies.

Courts have recognized four types of state laws which "relate to" a plan and are thereby preempted by ERISA:

(1) laws regulating the type of benefits or terms of ERISA plans;

(2) laws that create reporting, disclosure, funding, or vesting requirements for ERISA plans;

(3) laws that provide rules for the calculation of the amount of benefits to be paid under ERISA plans; and

(4) laws and common-law rules that provide remedies for misconduct growing out of the administration of an ERISA plan. Martori Bros. Distributors v. James-Massengale, 781 F.2d 1349, 1356-1358 (9th Cir.), cert. denied, 107 S.Ct. 435 (1986).

The state mechanic's lien law found in Civil Code Section 3111 does not fall under any of the four categories of state laws enumerated in Martori. It does not regulate the type of benefits or terms of plans, nor does it create reporting, disclosure, funding, or vesting requirements for those plans. It does not provide rules for the calculation of benefits, nor does it provide remedies for misconduct in the administration of a plan. Civil Code Section 3111 simply provides a collection remedy for Trust Funds to recover contributions due from a delinquent employer. As

it does not fall under those types of laws which "relate to" benefit plans, it is not preempted by ERISA.

Although relied upon by the Court in its decision, Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988) does not support the preemption of the mechanic's lien remedies afforded Trust Funds under Civil Code Section 3111. In Mackey, the U.S. Supreme Court held that a Georgia statute barring garnishment of ERISA-covered welfare plans under state law garnishment procedures was preempted. The Court looked to the fact that the statute gave ERISA plans different treatment under Georgia garnishment procedures than that afforded non-ERISA plans (see Mackey, 100 L.Ed.2d at p. 844). California Civil Code Section 3111, by contrast, does not afford

ERISA trust funds any different treatment than any other party entitled to invoke the mechanic's lien remedy under California law. Hence, the factors which led to preemption of the state anti-garnishment statute in Mackey do not exist in regard to Civil Code Section 3111 in this case. Mackey further held that Georgia's general garnishment statute, which did not single out ERISA plans for special treatment, was not pre-empted by ERISA (see Mackey, 100 L.Ed.2d at p. 845). Civil Code Section 3111, which similarly does not give ERISA plans any different treatment than others authorized to utilize the lien remedy, falls within the same category of laws as Georgia's general garnishment statute, and is there-fore not preempted. Hence, under either the four-part test for preemption set forth in Martori, or under the factors enunciated

in Mackey, Civil Code Section 3111 is not preempted by ERISA.

ERISA does afford Trust Funds an in personam remedy to collect contributions from the delinquent employer. (ERISA Sections 515, 502(g)(2) [29 U.S.C. Sections 1145, 1132(g)(2)]). That remedy, however, is not to the exclusion of any state in rem remedies afforded Trust Funds to collect those same contributions. Section 515 creates a statutory requirement that an employer participating in an employee benefit plan should pay contributions owed according to the terms of agreement, and creates an ERISA cause of action against the employer (in personam) if the statute is violated. By contrast, Civil Code Section 3111 creates a lien against property (in rem) improved by the work of the employe in the amount of delinquent contributions.

The rights an employee benefit plan may have against a third party property owner under state law are not directly implicated by Section 515, nor by the provisions of ERISA Section 502(g)(2) which assist the enforcement of Section 515. Congress gave no indication of an intent to destroy all rights of employee benefit plans against third parties in exchange for creating an ERISA cause of action against the delinquent employer alone. The ERISA action against the employer is, in many cases, inadequate, as Trust Funds have no method under ERISA of checking the credit worthiness of signatory employers. Trust Funds are often left holding a paper judgment against employers who have gone out of business or simply left the area, especially since the employers are often domiciled outside of the states serviced by the Trust Funds. Congress

clearly did not intend to leave Trust Funds without effective state in rem remedies for collecting these contributions. Under the statutory scheme of ERISA, Civil Code Section 3111 is still a viable remedy for the collection of delinquent employer contributions.

CONCLUSION

ERISA Trust Funds have frequently utilized state lien remedies to collect contributions for their beneficiaries who performed work on the liened property. The delinquent employer may not always be a viable source for collecting these contributions. As Civil Code Section 3111, which affords ERISA Trust Funds these lien remedies, is not preempted by ERISA, the Iron Workers Trusts pray that the writ of certiorari be granted.

DATED: October 14, 1991

Respectfully submitted,

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PATRICK M. HEVESY

By Patrick M. Hevesy
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Counsel for Amicus
Curiae

No. 91-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the California Supreme Court

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF THE LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA;

(Additional Amici Listed on Inside Cover)

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CARPENTERS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA;
CARPENTERS ANNUITY TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS VACATION TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA; AND
OPERATING ENGINEERS HEALTH AND WELFARE TRUST FUND;
PENSION TRUST FUND FOR OPERATING ENGINEERS;
PENSIONED OPERATING ENGINEERS HEALTH AND WELFARE FUND;
OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS PRE-APPRENTICESHIP, APPRENTICE AND JOURNEYMEN AFFIRMATIVE ACTION TRAINING FUND;
OPERATING ENGINEERS VACATION AND HOLIDAY PLAN;
OPERATING ENGINEERS CONTRACT ADMINISTRATION TRUST FUND;
OPERATING ENGINEERS MARKET PRESERVATION TRUST FUND;
OPERATING ENGINEERS INDUSTRY STABILIZATION TRUST FUND
IN SUPPORT OF PETITIONER

IN THE

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EL CAPITAN DEVELOPMENT COMPANY,
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On Petition for Writ of Certiorari to the California Supreme Court

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT OF PETITIONER

To the Honorable Chief Justices and Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 36 of the Rules of this Court, the Laborers Health and Welfare Trust Fund for Northern California; Laborers Vacation-Holiday Trust Fund for Northern California; Laborers Pension Trust Fund for Northern California; Laborers Training and Retraining Trust Fund for Northern California; Carpenters Health and Welfare Trust Fund for California; Carpenters Pension Trust Fund for Northern California; Carpenters Vacation and Holiday Trust Fund for Northern California; Carpenters Apprenticeship and Training Trust Fund for Northern California; Carpenters Annuity Trust Fund for Northern California; Cement Masons Health

and Welfare Trust Fund for Northern California; Cement Masons Pension Trust Fund for Northern California; Cement Masons Vacation Trust Fund for Northern California; Cement Masons Apprenticeship and Training Trust Fund for Northern California; and Operating Engineers Health and Welfare Trust Fund; Pension Trust Fund for Operating Engineers; Pensioned Operating Engineers Health and Welfare Fund; Operating Engineers and Participating Employers Pre-Apprenticeship, Apprentice and Journeymen Affirmative Action Training Fund; Operating Engineers Vacation and Holiday Plan; Operating Engineers Contract Administration Trust Fund; Operating Engineers Market Preservation Trust Fund; Operating Engineers Industry Stabilization Trust Fund (collectively hereinafter referred to as "Trust Funds") respectfully move for leave to file the accompanying brief as *amicus curiae* in support of the petition for Writ of Certiorari. Petitioners have consented to the filing of this brief; respondents have not.

INTEREST OF THE TRUST FUNDS

Each of the above-named Trust Funds is an employee benefit plan organized and existing under the laws of the United States. Each Trust Fund is an express trust created by a written trust agreement subject to and pursuant to § 302 of the Labor Management Relations Act, 29 U.S.C. § 186, and a multi-employer employee benefit plan within the meaning of §§ 3 and 4 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1002-03. The Boards of Trustees of each Trust Fund has the responsibility to collect the contributions owed to the respective plans by construction employers pursuant to collective bargaining agreements covering workers in the building and construction trades.

In discharge of their fiduciary duty under ERISA to "make systematic, reasonable and deliberate efforts to collect delinquent contributions," the Board of Trustees

of each Trust Fund uses all available collection remedies provided under California law, including the recordation, and, if necessary, the foreclosure of mechanics' liens under Civil Code § 3111.

Mechanics' liens provide a primary remedial tool to the Trust Funds which is especially important in today's economic climate. The Board of Trustees of these Funds are understandably concerned with the holding of the California Supreme Court in this case that this remedy —the foreclosure of mechanics' liens—is preempted by ERISA. Therefore, the Trust Funds urge this Court to issue a Writ of Certiorari. Refusal of this Court to review the judgment below will have a broad and adverse impact upon the fiscal soundness of construction employee benefit plans and consequently upon the plans' ability to provide benefits to the workers.

ISSUES DEVELOPED BY THE TRUST FUNDS

The Trust Funds' brief focuses on issues which it considers not adequately presented to this Court, including:

(a) the particularly adverse impact that the decision below will have on the ability of the Boards of Trustees of multi-employer plans to adequately satisfy their obligation to protect fund assets, and as a result, distribute plan benefits;

(b) the fundamental conflict between the decision of the court below and the decisions of this Court, and

(c) the fundamental conflict between the decision of the court below and the legislative history and purposes of ERISA.

The Trust Funds, therefore, move for leave to file the accompanying brief *amici curiae*.

Respectfully submitted,

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Dated: October 1991

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v.

EL CAPITAN DEVELOPMENT COMPANY,
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On Petition for Writ of Certiorari to the California Supreme Court

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OPERATING ENGINEERS CONTRACT ADMINISTRATION TRUST FUND;
OPERATING ENGINEERS MARKET PRESERVATION TRUST FUND;
OPERATING ENGINEERS INDUSTRY STABILIZATION TRUST FUND
IN SUPPORT OF PETITIONER

The Trust Funds submit this brief as amici curiae to urge the Court to review the holding below that the mechanics' lien provisions contained in the California Civil Code are preempted by § 514(a) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1144.

INTEREST OF THE TRUST FUNDS

Each of the above-named Trust Funds is an employee benefit plan organized and existing under the laws of the United States. Each Trust Fund is an express trust created by a written trust agreement subject to and pursuant to § 302 of the Labor Management Relations Act,

29 U.S.C. § 186, and a multi-employer employee benefit plan within the meaning of §§ 3 and 4 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1002-03. The Boards of Trustees of each Trust Fund has the responsibility to collect the contributions owed to the respective plans by construction employers pursuant to collective bargaining agreements covering workers in the building and construction trades.

During the three-year period ending August, 1991, the Carpenters Trust Funds collectively received over $596,000,000 in contributions from approximately 1,800 employers. During the five-year period ending September, 1991, the Laborers Trust Funds collectively received over $574,100,000 in contributions from approximately 1,546 employers. During the five-year period ending September, 1991, the Cement Masons Trust Funds collectively received over $91,300,000 in contributions from approximately 500 employers. During the five-year period ending December, 1990, the Operating Engineers Trust Funds collectively received over $87,190,000 in contributions from approximately 2,200 employers.

Each Trust Fund is confronted with employers who are delinquent in meeting their contractual obligations. The Carpenters Trust Funds list approximately 350 delinquent employers with shortages aggregating more than $24,000,000 during the most recent three-year period. The Laborers Trust Funds list approximately 237 delinquent employers with shortages aggregating more than $959,500 during the most recent five-year period. The Cement Masons Trust Funds list approximately 64 delinquent employers with shortages aggregating more than $218,000 during the most recent five-year period. The Operating Engineers Trust Funds list approximately 785 delinquent employers with shortages aggregating more than $4,077,000 during the most recent five-year period.

In discharge of their fiduciary duty under ERISA to "make systematic, reasonable and deliberate efforts to

collect delinquent contributions," the Board of Trustees of each Trust Fund uses all available collection remedies provided under California law, including the recordation, and, if necessary, the foreclosure of mechanics' liens.

Each Trust Fund utilizes other remedies provided by California law, such as actions on bonds filed by contractors pursuant to § 7071.6, *et seq.* of the Business and Professions Code to pursue, among other things, the payment of fringe benefits for the contractors' employees; actions under § 3172 of the Civil Code to enforce rights arising from stop notices and bonded stop notices for private works of improvement; actions under Civil Code § 3210 to enforce rights arising from stop notices for public works; and actions under Civil Code § 3249 against sureties on payment bonds on public works.

The use of these state law remedies is essential to the proper and effective performance of the collection duties of the Trust Funds. The Board of Trustees of these Funds are understandably concerned with the holding of the California Supreme Court in this case that one of the remedies, the foreclosure of mechanics' liens, is preempted by ERISA. The rationale of the California Supreme Court in arriving at its decision applies to most, if not all, of the remedies enumerated above. If this holding were affirmed, the Trust Funds would be denied essential remedies necessary to the exercise of the Trustees' fiduciary duties required by ERISA.

Mechanics' liens provide a primary remedial tool to the Trust Funds which is especially important in today's economic climate. Therefore, the Trust Funds urge this Court to issue a Writ of Certiorari. Refusal of this Court to review the judgment below will have a broad and adverse impact upon the fiscal soundness of construction employee benefit plans and consequently upon the plans' ability to provide benefits to the workers.

SUMMARY OF ARGUMENT

A. California law provides a comprehensive statutory system intended to ensure that those persons who provide labor or materials to the improvement of real property are properly compensated for their contribution. California Civil Code § 3111 was designed to assure that construction workers' employee benefit plans, which are empowered to preserve and protect the fringe benefit portion of the workers' total compensation package, have equal access to the mechanics' lien remedial scheme. It is apparent that § 3111, by its terms, seeks to treat employee benefit plans in a manner similar to other mechanics' lien claimants.

The California Supreme Court held that § 3111 is preempted because it "relates to" ERISA regulated employee benefit plans "by creating an additional funding mechanism for ERISA plans not provided for by Congress." *Carpenters Southern California Administrative Corporation v. El Capitan Development Co.*, 52 Cal.3d 1041, 1051 (1991). The Trust Funds submit that it is the state law established by the decision below, striking down § 3111, which controverts ERISA rather than § 3111 itself.

In *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), this Court held that a state law which singles out ERISA employee benefit plans for different treatment is preempted under ERISA § 514(a). The effect of the decision below is to deny mechanics' lien remedies to employee benefit plans, while permitting such remedies to non-ERISA plans and other lien claimants. This decision constitutes the "different treatment" rejected in *Mackey*, and therefore the decision itself is preempted by ERISA.

B. The decision below has held § 3111 preempted by ERISA because, it is asserted, this statute "relates to" ERISA plans. *El Capitan*, at 1048. The primary ra-

tionale offered for this conclusion states that § 3111 "relates to" ERISA because it creates an additional cause of action for enforcing contribution obligations, as well as making an additional entity liable for such sums. *Id.*

The Trust Funds contend that this analysis disregards the nature of § 3111 and relevant precedents of this Court. Rather than creating a new substantive cause of action, § 3111 creates a security interest in the real property which is benefited by the labor contributed. California Civil Code § 3110. Section 3111 simply provides a collection remedy against the property, and rights arising thereunder, only when the employer fails to perform its obligation.

Section 3111, by its terms and impact, does not "relate to" employee benefit plans in a manner which has been considered a basis for preemption under the decisions of this Court. This statute has no perceptible impact on plan administration, operations, funding, or distributions of benefits and fails to raise concerns between plan compliance and conflicting law. In essence, § 3111 does not implicate the legal relationships with which ERISA is concerned, which are the relationships between the plan, fiduciaries, employers, and participants. For these reasons, the Court below has erred by holding § 3111 preempted by ERISA.

C. The legislative history of ERISA and its amendments provide clear support that state remedies for the collection of delinquent benefit plan contributions were both contemplated and encouraged by Congress. Relying on its sweeping interpretation of ERISA's preemption provision, the Court below failed to consider the significance of these authorities.

ARGUMENT

I. THE DECISION BELOW IMPERMISSIBLY SINGLES OUT EMPLOYEE BENEFIT PLANS FOR DIFFERENT TREATMENT UNDER CALIFORNIA MECHANICS' LIEN PROVISIONS.

California provides a comprehensive statutory scheme designed to ensure that those who provide labor or materials to the improvement of real property are compensated for their contribution. The following statutes identify persons protected under California mechanics' lien law.

> Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers . . . and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished. . . .
>
> California Civil Code § 3110.
>
> For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.
>
> California Civil Code § 3111.

In recognition of the fact that fringe benefit payments represent an important and substantial portion of construction workers' total wage package, the predecessor of Civil Code § 3111 was amended in 1965. The purpose of this amendment was to assure that Trust Funds would be guaranteed an efficient mechanism to enforce the rights

of their beneficiaries, *i.e.*, the workers' lien rights for amounts owing as fringe benefit contributions. Section 3111 did not create a new right; it simply broadened the category of those persons eligible to assert the lien rights already established by § 3110—rights which have been guaranteed under California law since 1872. The Trust Funds, on behalf of their beneficiaries, rely on the mechanics' lien remedy as an important tool in securing the contributions which fund the benefits due.[1] As a result of the decision below, ERISA trust funds are prevented from asserting workers' lien rights arising from unpaid contributions due and owing to the funds. The Trust Funds submit that the decision below singles out ERISA-employee benefit plans for disparate treatment under the State's mechanics' lien provisions and, therefore, the decision itself and the ruling created thereby is preempted under ERISA § 514(a) and § 514(c).

In *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), this Court considered the impact of ERISA's preemption provision on Georgia's garnishment statute. In *Mackey*, this Court considered whether ERISA preempted a related Georgia statute which barred the garnishment of funds or benefits of ERISA-regulated employee benefit plans. In *Mackey*, a collection agency obtained money judgments against participants of a vacation and holiday benefits plan for money owed to clients of the collection agency. The agency brought an action

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[1] Notably, ERISA, as interpreted by this Court, requires that benefits must be provided by the trust funds to the beneficiaries even if the contributions cannot be collected by the trust fund. See, *Central States Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 567 n.7, 579 n.20 (1985); *see also*, Department of Labor Advisory Op. No. 76-89 (Aug. 31, 1976) and Department of Labor Advisory Op. No. 78-28A (Dec. 5, 1978). The decision of the court below, on the other hand, prevents the collection of the monies necessary to provide the very benefits mandated by this Court, thereby placing the financial integrity of these employee benefit trust funds in jeopardy, a result which is the very antithesis of the ERISA statutory scheme developed by Congress.

in Georgia state court to collect these money judgments by garnishing the debtors' plan benefits. The trial court granted the collection agency's request for garnishment.

The Georgia Court of Appeals reversed, holding that the Georgia statute exempting ERISA plans from garnishment precludes the garnishment of funds or benefits of ERISA-regulated employee benefit plans. *Mackey*, 486 U.S. at 825, 828. On appeal, the Georgia Supreme Court reversed. That court found that the statute in question barred the garnishment action, but held that such provision was preempted by ERISA because it purported to regulate ERISA plans. As a result of the Georgia Supreme Court's decision, ERISA plans became subject to garnishment under Georgia's general garnishment laws. On certiorari, this Court held that the state anti-garnishment law was preempted by ERISA. *Id.* at 830. The Court stated that the Georgia statute's express reference to ERISA and its sole application to employee benefit plans subjected it to preemption by the federal scheme. *Id.* at 829. The Court declared ". . . we hold that [the Georgia statute], *which singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures*, is preempted under § 514(a)." *Id.* at 830 (emphasis added).

The Court explained that this "different treatment" was apparent on the face of the Georgia statute by its express reference to ERISA plans. As a result of this provision, ERISA welfare benefit plans were protected from garnishment while non-ERISA plans were not so protected. *Id.* at 830 n.4.

The Court next considered whether § 514(a) preempts Georgia's general garnishment law because it "relates to" ERISA welfare benefit plans. The preemption argument was premised on the assertion that the Georgia garnishment law "relates to" ERISA welfare benefits plans because of the substantial administrative burdens and costs incurred by benefit plan trustees when they are forced to

respond to garnishment actions. *Id.* at 831. The Court rejected this argument and held that ERISA does not preclude the garnishment of ERISA-regulated welfare benefit plans pursuant to state judgment collection mechanisms. *Id.* at 841.

In reaching its decision, this Court analyzed the language and structure of the ERISA scheme and found that Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit plans. This conclusion was based on three factors: (1) ERISA § 502, which provides that ERISA plans may sue or be sued as an entity, clearly contemplates the enforcement of money judgments against benefit plans; (2) ERISA plans may be sued in "run-of-the-mill" state law contract or tort claims; and (3) ERISA provides no enforcement mechanism for collecting judgments in numbers 1 and 2 above. *Id.* at 832-33. Because ERISA contemplates the execution of such judgments against plans in civil actions without providing any collection mechanisms, this Court concluded that state law methods for collecting money judgment were not preempted. *Id.* at 834.

Finally, the Court addressed the seeming incongruity of upholding the statute permitting the garnishment of ERISA welfare benefit plans, while striking down the benefit plans. *Id.* at 838, n.12. The Court clarified this distinction by stating: ". . . *any* state law which singles out ERISA plans, by express reference, for special treatment is preempted. [citation] It is this 'singling out' that pre-empts the Georgia anti-garnishment exception." *Id.* (Emphasis in original).

The analysis in *Mackey* is instructive with respect to the issues in the present case. *Mackey* illustrates the manner in which the present case challenges the primary concerns of California's mechanics' lien law scheme. As we have seen, California Civil Code § 3110 is part of a broad framework of statutory protection designed to in-

sure that workers who contribute time, labor and materials to the improvement of real property obtain the wages and benefits to which they are entitled. Civil Code § 3111 provides the same mechanics' lien rights to employee benefit trusts as those provided to persons identified in § 3110. ERISA trust funds receive no greater benefit under this law than any other party entitled to invoke the mechanics' lien remedy. No "special treatment" of employee benefit plans arises as a result of § 3111. Section 3111 simply treats employee benefit plans in the same manner as any other mechanics' lien claimant. However, as a result of the California Supreme Court's decision, these benefits plans are singled out for special treatment which is not permitted under the rationale of *Mackey*.

By enacting § 3111, California legislators recognized the fundamental relationship between employee benefit trusts and their participant's total compensation package. In other words, § 3111 implicitly acknowledges that the function of ERISA trust funds is to safeguard in trust, that portion of a worker's compensation paid as fringe benefits, and to ensure the proper distribution of such benefits. Furthermore, it is well settled that fringe benefit claims are part of the employee's compensation, and must receive similar treatment. *United States v. Carter*, 353 U.S. 210 (1956). In sustaining a cause of action for fringe benefits against a payment bond surety, this Court stated that ". . . contributions were a part of the compensation for the work done . . ." and that the "trustees ". . . stand in the shoes of the employees and are entitled to enforce their rights." *Id.* at 217-18.

The majority opinion below held that Civil Code § 3111 is preempted because it "relates to" ERISA regulated employee benefit plans "by creating an additional funding mechanism for ERISA plans not provided for by Congress. . . ." *Carpenters Southern California Administrative Corporation v. El Capitan Development Company*, 53

Cal.3d 1041, 1051 (1991). As a result of this decision, ERISA trust funds, in their role as repository for the fringe benefit payments of their participants, are excluded from California's mechanics' lien collection mechanism. Therefore, § 3110 claimants are permitted access to mechanics' lien remedies while ERISA trust fund claimants are denied, making recovery of contributions owed less likely. This disparate treatment of ERISA regulated trust fund is illogical, discriminatory, and impermissible under this Court's precedents.

By precluding ERISA regulated trusts from utilizing mechanics' lien collection remedies, under this Court's holding in *Mackey*, the decision below constitutes an impermissible "singling-out" of ERISA employee benefit plans for different treatment under state mechanics' lien provisions. The actual effect of the California Supreme Court decision is to establish "different treatment" of ERISA employee benefit plans under state mechanics' lien provisions which is preempted under *Mackey*.

In *Mackey*, the "different treatment" arose as a result of the express provisions of the Georgia statute exempting ERISA benefit plans from the operation of the state's general garnishment laws. *Mackey* at 828-30. "Different treatment" there was further supported by the disparate treatment accorded to non-ERISA benefit plans as a result of the application of the garnishment exemption law. *Id.* at 830, n.4.

In the immediate case, by Civil Code § 3111, California sought to ensure that the portion of construction workers' compensation paid to employee benefit plans was protected to the same extent available to others under mechanics' lien remedies. In concluding that § 3111 is preempted by ERISA, the majority demonstrate a shallow comprehension of the relationship of employee benefit funds to labor policies and show a lack of understanding of the policy and purposes behind ERISA. For example, the majority's

rationale that ERISA plans do not furnish labor or materials to real property completely disregards the legal relationship between the ERISA plans and their participants, who do provide the labor.

The decision below asserts Civil Code § 3111 is preempted because it creates an additional cause of action for enforcing contribution obligations, as well as making additional entities liable for such amounts. *El Capitan*, at 1048. This rationale confuses the nature of the mechanics' lien remedy. Mechanics' liens do not create substantive personal rights against the owner of the real property. Such liens simply create a security interest in the property to which labor or services were contributed. Therefore, pursuant to § 3111, if appropriate payments are not made by the employer, a claimant may file a lien against the property and avail itself of the mechanics' lien remedy to collect an existing obligation. California Civil Code § 3110, *see, El Capitan*, at 1065 (Broussard, J., dissenting). This is precisely the enforcement tool provided to each individual construction laborer who performs work on a particular work of improvement. Civil Code § 3110. It is inaccurate to characterize such a collection mechanism as an additional substantive cause of action. Furthermore, the property owner should not be viewed as a stranger to this transaction, since its property has been enriched by the value of the labor provided.

ERISA § 514(a) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a). "The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any state. . . ." ERISA § 514(c), 29 U.S.C. § 1144(c). "[W]e have *virtually taken it for granted that state laws which are specifically designed to affect employee benefit plans are pre-empted under § 514(a).*" *Mackey*, at 829 (emphasis added). Because the California Supreme Court's decision itself impermis-

sibly "singles-out" ERISA employee benefit plans for different treatment under California's state mechanics' lien provisions, the Trust Funds respectfully request this Court to grant certiorari and reverse.

II. THE CALIFORNIA SUPREME COURT ERRONEOUSLY APPLIED THE PRECEDENTS OF THIS COURT IN DETERMINING WHETHER CALIFORNIA CIVIL CODE § 3111 IS PREEMPTED BY ERISA.

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). "The statute imposes participation, funding, and vesting requirements on pension plans. It also sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans." *Id.* at 91.

As part of this regulatory system, Congress sought to provide various safeguards to prevent abuse and "to completely secure the rights and expectations" created by ERISA. S.Rep. No. 93-127, p. 36 (1973). A crucial element among these safeguards is § 514(a), 29 U.S.C. § 1144(a), ERISA's broad preemption provision. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. ——, 112 L.Ed.2d 474, 482-83 (1990). ERISA § 514(a) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a).

"A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw, supra*, at 96-97. However, "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.* at 100.

"[T]he question whether a certain state action is preempted by federal law is one of congressional intent.

'The purpose of Congress is the ultimate touchstone.'" *Ingersoll-Rand*, 112 L.Ed.2d at 483 (citing *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985)).

The preemptive power of § 514 is indeed broad. However, a reviewing court must provide more than lip service to sweeping statutory statements. A review of the Court's decisions in this area provides valuable guidelines for the instant case.

In *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), the Court considered whether a Maine law requiring severance payments to employees laid off as a result of a plant closing was preempted by ERISA. This Court held that this statute was not preempted since it neither established nor required an employer to maintain an employee benefit "plan" within the meaning of ERISA. *Id.* at 6. Since the statute dealt with employee "benefits", rather than "employee benefit *plans*," it was not preempted. *Id.* at 7-8.

The Court further explained that preemption of the statute did not serve ERISA's purposes since it did not raise concerns regarding the imposition of contradictory regulations on employee benefit plans by different jurisdictions, nor did it implicate regulatory concerns regarding the administration of such plans. *Id.* at 8, 14. The Court held that where a state law created no danger of a conflect with a Federal statute, there is no basis for preemption. *Id.* at 19.

In *Mackey v. Lanier Collections*, this Court rejected the preemption challenge to Georgia's general garnishment laws as applied to ERISA-regulated employee benefit plans. *Mackey*, 486 U.S. at 841. Based upon an analysis of the express language and structure of ERISA, this Court concluded that no Congressional intent existed to bar the state law collection methods there at issue. *Id.* at 834. Furthermore, the Court rejected petitioner's contentions that the administrative and economic impact of the state garnishment laws necessarily "related to"

ERISA welfare benefit plans so as to require preemption under § 514. *Id.* at 831.

In *Shaw v. Delta Airlines*, 463 U.S. 85 (1983), this Court considered ERISA preemption challenges to New York state human rights and disability benefit statutes. The New York human rights law prohibited discriminatory treatment by employee benefit plans for pregnant employees as compared to other non-occupational disabilities. The law at issue required employers to pay disability benefits to pregnant employees, therefore treating them in a similar manner as employees otherwise disabled. Striking down the state law, the Court held the provision preempted by ERISA but "only insofar as it prohibits practices that are lawful under federal law." *Id.* at 108. The Court explained that by this provision, New York prohibited discrimination involving employee benefit plans otherwise permitted by federal law (at that time). The New York state disability law was held not preempted by ERISA. *Id.* at 108.

In *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41 (1987), this Court addressed a preemption challenge to a plan participant's state law action involving improper processing and bad-faith failure to pay benefits under an ERISA regulated insurance plan. Much of this decision involved an interpretation of the "deemer clause" of ERISA § 514(b)(2)(B). However, this Court held that ERISA's civil enforcement scheme preempts state-law actions asserting improper processing and payment of ERISA plan benefits.

In *FMC Corp. v. Holliday*, 498 U.S. ——, 112 L.Ed.2d 356, 111 S.Ct. —— (1990), this Court held that ERISA preempted a Pennsylvania state subrogation law which regulated employee benefit plans. This statute was preempted since it controlled the subrogation and reimbursement rights arising in state tort claims thereby directly regulating the funding and benefits of ERISA regulated employee benefit plans. *Id.* at 362-63.

In *Ingersoll-Rand v. McClendon*, 498 U.S. ——, 112 L.Ed.2d 474, 111 S.Ct. 478, this Court considered a preemption challenge to a state wrongful discharge action based on an employee's allegation that his employer terminated his position to avoid pension plan liability. The Texas Supreme Court upheld the employee's wrongful discharge action because it found that the principal reason for the termination was the employer's desire to evade its pension obligations. *Id.* 112 L.Ed.2d at 482. However, this Court reversed the decision of the Texas Court, holding that state laws which provide a remedy for the violation of rights expressly guaranteed by ERISA and exclusively enforced under its civil enforcement provisions are preempted. *Id.* at 488. The Court explained that the basis of the state causes of action focused on the very existence of the plan as well as the participant's rights therein. Because ERISA itself provides for the exclusive enforcement of such rights, the state law is preempted. *Id.* at 484, 486.

Based on these Supreme Court decisions, state laws are preempted pursuant to § 514(a) in the following circumstances: (1) where the law specifically targets employee benefit plans for special treatment, *Mackey*, (2) where the state law prohibits practices permitted under federal law, *Shaw*; (3) where the law provides a state remedy for actions related to claims processing and the distribution of benefits by employee benefit plans, *Pilot Life*; (4) where the law directly controls the subrogation and reimbursement rights of employee benefit plans thereby regulating the funding of such plans, *FMC*; (5) where the law provides a state remedy based on rights directly concerning the existence of the plan and the rights of its participants. *Ingersoll-Rand.*

Where preemption has been found, the state laws involved have directly affected aspects of the substantive legal relationships between employee benefit funds, their participants and employers. Rather than merely "relate

to" employee benefit plans, these state laws substantially impact employee benefit plans in crucial areas governed by ERISA including plan administration, funding, and the distribution of benefits.

In contrast, state laws have not been determined preempted by ERISA in the following circumstances: (1) laws affecting employee benefit plans in too tenuous or remote a manner upon which to warrant preemption, *Shaw*; (2) where the law provides ancillary collection remedies in civil cases against employee benefit plans, *Mackey*; (3) where the law creates no danger of conflict with ERISA purposes and policies, *Fort Halifax*.

Based upon these principles, California Civil Code § 3111, by its terms, does not fall into the category of state laws preempted § 514(a). As has been demonstrated, § 3111 seeks to treat employee benefit plans similarly to all other claimants under California's mechanics' lien remedies. Section 3111 has no impact on any phase of employee benefit plan administration which conflicts with ERISA's purposes or policies. Section 3111 raises no danger regarding the compliance by employer benefit funds with conflicting laws of various jurisdictions. Section 3111 has no impact on the terms and conditions of employee benefit plans, and it has no affect on funding, vesting, or benefit provisions established pursuant to ERISA.

As in the statute at issue in *Mackey*, § 3111 simply provides an alternate mechanism permitting employee benefit plans (like all mechanics' lien claimants) to collect previously existing obligations. Furthermore, as in *Mackey*, no basis exists which would support the argument that the area of collection procedures is exclusively enforced under ERISA.

III. THE CALIFORNIA SUPREME COURT'S HOLDING THAT CIVIL CODE § 3111 IS PREEMPTED BY ERISA IS INCONSISTENT WITH LEGISLATIVE INTENT.

As originally enacted, ERISA did not provide a federal cause of action for the recovery by employee benefit plans of unpaid contributions. *Mackey*, 486 U.S. at 832. Furthermore, ERISA § 502 provides that employee benefit plans may sue or be sued as an entity in § 502 actions. 29 U.S.C. § 1132(d)(1). ERISA plans may also be sued in state tort and contract actions. Despite these provisions, ERISA does not provide an enforcement mechanism for collecting judgments awarded in these types of actions. *Mackey*, at 833. Based on these provisions, this Court concluded that the collection of judgments pursuant to state law collection remedies was contemplated within the ERISA scheme in cases where an ERISA benefit plan is a party. *Mackey*, at 834.

This conclusion is supported by the legislative history of ERISA. In *Laborers Fringe Benefit Funds v. Northwest Concrete and Construction, Inc.*, 640 F.2d 1350, 1352 (6th Cir. 1981), the 6th Circuit declared:

> The legislative history underlying Section 502 indicates that Congress intended that the enforcement provisions should have teeth: the provisions should be liberally construed 'to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act.' H.Rep. No. 93-533, 93d Cong. & Ad. Newsp. 4639, 4655. This history further states that 'the intent of the Committee is to provide the full range of legal and equitable remedies available in *both state and federal courts* and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibility under state law for recovery of benefits due to participants.' (Emphasis added).

Further evidence of a congressional intent not to preempt state collection remedies is found in the legislative history of the Multi-Employer Pension Plan Amendments Act of 1980, wherein, *inter alia*, Congress enacted ERISA § 1145 providing employee benefit trusts with a federal cause of action for unpaid contributions.

Pertinent provisions of this history provide:

> The Committee's amendment provides that in the case of a civil action by any person to collect delinquent multi-employer plan contributions, *regardless of otherwise applicable law*, the court before which the action is brought may award the plaintiff (1) reasonable attorneys' fees, (2) court costs and (3) liquidated damages not to exceed 20% of the amount of delinquent contributions as determined by the court. However, these items are to be awarded to a plaintiff only to the extent that the multi-employer plan in question provided for such an award. The bill preempts any state or other law which would prevent the award of reasonable attorneys' fees, court costs, or liquidated damages or which would limit liquidated damages to an amount below the 20% level. However, the bill does not preclude the award of liquidated damages in excess of the 20% level if an award of such higher level of liquidated damages is permitted under state or other law. *The Committee amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multi-employer contributions.* (Emphasis added).
>
> H.R. Rep. No. 96-869 (II), 96th Cong., 2d Sess.

Based on these excerpts of legislative history, it is apparent that utilization of state remedies for the collection of delinquent contributions by employee benefit plans was contemplated, indeed encouraged by Congress.

CONCLUSION

For the foregoing reasons, the Trust Funds respectfully urge this Court to issue a Writ of Certiorari.

Respectfully submitted,

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Dated: October 1991

(5)

No. 91-480

MOTION FILED OCT 16 1991

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of California

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF THE SHEET METAL WORKERS TRUST FUNDS OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA, THE AIRCONDITIONING AND REFRIGERATION INDUSTRY TRUST FUNDS, THE SOUTHERN CALIFORNIA PIPE TRADES TRUST FUNDS, THE SHEET METAL AND AIRCONDITIONING CONTRACTORS NATIONAL ASSOCIATION, THE AIRCONDITIONING AND REFRIGERATION CONTRACTORS ASSOCIATION AND THE AIRCONDITIONING SHEET METAL ASSOCIATION IN SUPPORT OF PETITIONER

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CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of California

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

The Sheet Metal Workers Trust Funds of Southern California, Arizona and Nevada, The Airconditioning and Refrigeration Industry Trust Funds, The Southern California Pipe Trades Trust Funds, The Sheet Metal and Airconditioning Contractors National Association, The Airconditioning and Refrigeration Contractors Association and the Air Conditioning Sheet Metal Association hereby move the Court, pursuant to Supreme Court Rule 36.1, for leave to file the accompanying brief as amici curiae in support of the Petition for Writ of Certiorari filed on September 16, 1991 in USSC No. 91-480.

In support of this motion, these amici state as follows:

1. This motion is necessitated by the refusal, upon request, of Respondent El Capitan Development Company to give written consent to the filing of a brief by the amici applicants herein. Petitioner Carpenters Southern California Administrative Corporation has consented to the filing of the accompanying brief. Its letter of consent has previously been filed with the Clerk of the Court.

2. The amici curiae include employer associations and employee benefit plans in the construction industry who would be seriously adversely affected were the decision of the California Supreme Court not reviewed and reversed.

3. The Sheet Metal Workers Trust Funds have over 5000 active participants and 3000 retirees, the Southern California Pipe Trades Trust Funds have over 7500 active participants and 5000 retirees and the Airconditioning and Refrigeration Industry Trust Funds have over 1300 active participants and 500 retirees. Each of the individual plans of the Trust Funds are either an employee pension benefit or employee welfare benefit plan under Sections 3(1) or 3(3) of the Employee Retirement Income Security Act, 29 U.S.C. 1002(1) and (3). Each group of Trust Funds includes defined benefit pension plans, defined contribution profit sharing plans, health and welfare plans, and joint apprenticeship committees. These Trust Funds collect hundreds of thousands of dollars annually as the direct result of the filing of mechanics' liens against real property as part of their efforts to collect delinquent employer contributions and literally millions of dollars annually as the result of the threatened filing of such liens to collect delinquent employer contributions.

4. The Sheet Metal and Air Conditioning Contractors National Association, Inc. ("SMACNA") is an international association of employers which represents contrac-

tors for collective bargaining purposes whose members contribute to various pension and health plans around the country. It has over 2000 member contractors in the United States alone. SMACNA has local chapters throughout the United States including several in Southern California, Arizona and Nevada. SMACNA, its local chapters and contractor members are sponsors of and contributors to hundreds of multi-employer benefit plans throughout the United States, including the Trust Fund amici.

5. The Air Conditioning Sheet Metal Association ("ACSMA") is an association of employers in Los Angeles County which represents those employers for collective bargaining purposes. ACSMA members contribute to the Trust Fund amici curiae.

6. The Airconditioning and Refrigeration Contractors Association ("ARCA") is an association of employers in Southern California which represents those employers for collective bargaining purposes. ARCA members also contribute to the Trust Fund amici.

7. The affirmance of the California Supreme Court's decision that state mechanics' lien laws expressly giving trust funds the right to file liens for delinquent contributions on behalf of the covered participants are preempted by ERISA would seriously impinge on the Trust Funds' ability to provide the expected benefits to participants. It would also seriously affect the competitive status of the employers who contribute to these funds. If delinquent contributions cannot be recovered through mechanics' liens, the remaining contributing employers would be required to try to make up the shortfall in necessary contributions, something that is virtually impossible to completely do given the present state of the economy.

It is simply inconceivable that the purpose of ERISA, to provide for "the soundness and stability of plans with respect to adequate funds to pay promised benefits" (29

U.S.C. 1001(a)) can possibly be served by removing the most effective collection remedy that construction industry trust funds have. This Court's failure to consider and ultimately reverse the California Supreme Court's decision below would seriously affect the stability of the Plans because it would jeopardize both the financial soundness of the Plans and the employers who contribute to them.

The amici are in a unique position to advise the Court because of their intimate familiarity with the construction industry and its trust funds and the practice and procedures of the filing of trust fund mechanics liens to collect delinquent employer contributions.

WHEREFORE, it is respectfully moved and requested that these Trust Funds and Employer Associations be granted leave to file the accompanying brief as amici curiae.

Respectfully submitted,

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OCTOBER TERM, 1991

No. 91-480

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of California

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BRIEF OF AMICI CURIAE OF THE SHEET METAL WORKERS TRUST FUNDS OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA, THE AIRCONDITIONING AND REFRIGERATION INDUSTRY TRUST FUNDS, THE SOUTHERN CALIFORNIA PIPE TRADES TRUST FUNDS, THE SHEET METAL AND AIRCONDITIONING CONTRACTORS NATIONAL ASSOCIATION, THE AIRCONDITIONING AND REFRIGERATION CONTRACTORS ASSOCIATION AND THE AIR CONDITIONING SHEET METAL ASSOCIATION IN SUPPORT OF PETITIONER

The Sheet Metal Workers Trust Funds of Southern California, Arizona and Nevada, the Airconditioning and Refrigeration Industry Trust Funds, the Southern California Pipe Trades Trust Funds, the Sheet Metal and Airconditioning Contractors National Association, the Air Conditioning and Refrigeration Contractors Association and the Air Conditioning Sheet Metal Association

hereby submit this brief in support of the Petition for Writ of Certiorari in Case No. 91-480.

INTEREST OF THE AMICI CURIAE

A statement describing the Trust Funds and Employer Associations and their interest in this case is set forth in the preceding motion requesting leave to file this brief as amici curiae.

SUMMARY OF ARGUMENT

The brief of Petitioner, Carpenters Southern California Administrative Corporation, persuasively sets forth the legal analysis as to why the express language and purpose of ERISA requires a conclusion that the statute does not preempt state collection remedies in general, and mechanics' lien laws in particular. This brief will emphasize the practical reasons why such ERISA preemption would be disastrous to construction industry trust funds and the employers who contribute to them. It will also emphasize the Supreme Court's past history in ensuring that absurd results are not reached by a slavish adherence to overliteralistic interpretations of statutes.

REASONS THE WRIT SHOULD BE GRANTED

I. CONSTRUCTION INDUSTRY TRUST FUNDS CANNOT ADEQUATELY COLLECT CONTRIBUTIONS WITHOUT THE ASSISTANCE OF MECHANICS' LIEN RIGHTS

In February, 1989, Russell Heating and Airconditioning, one of the largest heating and airconditioning contractors in Southern California, simply closed its doors, and appointed an assignee to liquidate the company. Russell owed millions of dollars to many different creditors, including approximately $2 million to two banks as secured creditors. It owed the Sheet Metal Trusts $262,575, the Airconditioning Trusts $103,534, and the Pipe Trades Trusts $27,120. All physical assets in its

shops and in the form of company vehicles, as well as all receivables, were secured. Even assuming that individual liability could be established, which is virtually impossible with a large company which is properly run (from a formal, if not a financial, perspective), the individual owners did not appear to have sufficient assets to pay off the banks and pursuit of them through litigation appeared fruitless.

The bottom line was that, as the Trusts learned by way of reports from the assignee sent in April and July, 1991, all receivables had been collected, the corporate liquidation was closed and the senior secured creditor was still owed $250,000, and no other payments would be made through the liquidation on other debts. No payments were apparently being made to the junior secured creditor who was owed $1,000,000 and no unsecured creditor would get a cent from the company's liquidation.

Despite the ominous facts set forth in those reports, the Sheet Metal and Pipe Trades Trusts had *already* been paid in full, and all but $13,000 had been paid to the Airconditioning Trusts.[1] Every cent that the Trust Funds collected came from property owners or general contractors as a result of threatened or actually filed liens. The only problem in collection was that some of the property owners or contractors raised a preemption defense under the then pending *El Capitan* case, which increased the Trusts' legal bills and delayed what turned out to be eventual payment. For example amici Sheet Metal Trusts litigated ERISA preemption in one Russell lien and the California lower appellate Court rejected the preemption claim as "black literalism". *Sheet Metal Workers Pension Plan v. Columbia Savings*, 221 Cal. App. 3d Supp.

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[1] Employees who participate in the Airconditioning Trusts do a lot of 2-4 hour service calls which are too small to lien because it would cost more to file and pursue liens than the recovery would be. Therefore, those Trusts at times are unable to effectuate full recoveries.

21, 24 (1990). Over $10,000 was collected on that lien that obviously would not have been collected had that Court not so ruled.

If not for mechanics' liens, the Trust Funds would have received nothing on this case, and probably would have still expended significant attorneys fees to discover that they would get nothing.

There are countless additional examples, and we will not bore the Court with all of the specifics, but will give a few examples. One company went out of business in February, 1988 owing the Pipe Trades Trusts $107,000. Within a year, over $101,000 had been collected through liens. The corporate bankruptcy is still open with no prospects of any additional recovery. Another company went out of business in 1987 owing the Pipe Trades Trusts over $94,000. Over $81,000 was collected on liens and stop notices.

Similarly, in April, 1988 another company went out of business owing over $120,000 to the Sheet Metal Trusts and over $36,000 to the Airconditioning Trusts. Within a few months the entire amount was paid through liens to the Sheet Metal Trusts and all but $10,000 was paid to the Airconditioning Trusts. Supposedly the balance owed to Airconditioning is to be paid off "shortly" through the Bankruptcy Court, but without interest, etc. While some of what was received through liens may have also been eventually paid through bankruptcy, it was obviously more financially beneficial to the Trusts to have had the money earning interest for the last three years.

One recent final example is also instructive. A Sheet Metal contractor was delinquent for January through May, 1991 contributions for a total of over $140,000. The Trust Funds went directly to the general contractor and told him that liens and stop notices would be filed. Immediately the general contractor began making a series of joint checks that has now paid off the entire delin-

quency. This shows that even with ongoing companies, the right to file mechanics' liens can speed up payments from general contractors to their subcontractors and ultimately the Trust Funds.

These few examples emphasize the importance of mechanics' liens to the Trust Funds and to the employee participants and their dependents who are the intended beneficiaries of the contributions. Of equal importance is the benefit *to the existing contributing employers* from the Trust Funds' ability to file and recover on the liens.

II. THE FAILURE TO UPHOLD THE MECHANICS' LIEN REMEDY WOULD ADVERSELY AFFECT THE FINANCIAL SOUNDNESS OF CONTRIBUTING EMPLOYERS

If contributions are not properly paid to ensure adequate funds to pay the promised level of benefits, it is the remaining contributing employers who must bear the brunt of any necessary increased contributions. Already reeling under the weight of the current economy and the spiraling costs of health care which are ultimately passed on to them, these contractors who voluntarily participate through collective bargaining in providing excellent health and pension benefits to their employees must every day compete against certain rival contractors who are unwilling to provide the type of pension and health benefits provided by these Trust Funds.

Small businesses such as the subcontrators who contribute to these Trusts are the backbone of the American economy. What possible motive Congress might have had to sever that backbone which contributes to the maintenance of excellent health and pension benefits for their employees (thereby reducing the strain on federal and state programs), by forcing them to compensate for the delinquent contributions of their less fortunate or less responsible competitors that have been paid in the past through liens, is a mystery.

III. PREEMPTION OF STATE COLLECTION REMEDIES FOR TRUST FUNDS IS CONTRARY TO THE PURPOSE OF ERISA AND LEADS TO AN ABSURD RESULT GIVEN THE REMEDIAL PURPOSES OF THE STATUTE

And what evil is the federal preemption of state mechanics' lien laws supposed to cure?

Developers and general contractors cannot with a straight face complain that the liens place any undue burdens on them. They deal with liens and stop notices all the time. The responsible ones all make sure their subcontractors have paid all lienable bills, including their fringe benefit contributions, before progress payments or retentions are released. Double payments by property owners or general contractors (payment in full to a contractor and then additional payment on a trust lien) are rare, and then only made by incompetent concerns.

Nothing in the language of ERISA requires such preemption. As pointed out by Petitioners, (Brief p. 18-19) many Courts had held that ERISA did not even provide a collection remedy before the 1980 MEPPA changes. Were state collection remedies preempted by NO alternative ERISA remedies? If not, were the state collection remedies only preempted by the new language in Section 515, 29 U.S.C. 1145 that employers "shall, to the extent not inconsistent with law, make" the contributions they are supposed to? Petitioners point out the brief legislative history indicating that the state remedies were not to be preempted by that language. Were those remedies already preempted by the standard preemption language in the original ERISA statute or were they only preempted when ERISA was amended to say that employers were supposed to comply with the law (including state law perhaps) and pay what they promised? The obvious logical answer is that the state collection remedies were *never* meant to be, nor were they, by any logical reading, preempted by ERISA.

Preemption of mechanics' liens certainly does not advance any of the purposes of ERISA. The section of that statute indicating that its purpose was to protect property owners and general contractors from paying the appropriate fringe benefits on behalf of the workers who build their property has thus far escaped our discovery. Similarly elusive to track down has been the statutory section establishing that ERISA was intended to ensure that Trust Funds would *not* be able to collect the contributions necessary to fund the benefits promised to the participants.

If indeed the admittedly broad preemptive language of ERISA might be read by a reasonable person to possibly encompass state collection remedies (which we do not concede and the contrary argument is well set out in Petitioner's Brief), this Court has fully recognized in the past that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459, 36 L.Ed. 226, 228, 12 S.Ct. 511 (1892); *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612, 619, 18 L.Ed.2d 374, 364, 87 S.Ct. 1250 (1967), *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 222 (n.20), 68 L.Ed.2d 783, 796, 101 S.Ct. 2266 (1981).

As this court pointed out in *Holy Trinity*, "this is not the substitution of the will of the judge for that of the legislator, for frequently . . . a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act." 143 U.S. *supra* at 459. As this Court has also said "[t]hat principle has particular application in the construction of labor legislation . . ." *National Woodwork*, 386 U.S. *supra* at 619.

This principle has also been expressly applied by this Honorable Supreme Court to construction of federal mechanics' lien type laws (Materialmen's Act). In *Fleischmann Construction Co. v. United States Use of Forsberg*, 270 U.S. 349, 360, 70 L.Ed. 624, 631, 46 S.Ct. 284 (1926), this Court, in applying the *Holy Trinity* principles, declared that

> "The purpose of the Materialmen's Act, which is highly remedial and must be construed liberally, is to provide security for the payment of all persons who supply labor or material in a public work . . ." [2]

Similarly, in *Fleisher Engineering v. United States*, 311 U.S. 15, 18; 85 L.Ed. 13, 15, 61 S.Ct. 81 (1940) this Court noted that the materialmen statute must be given "a reasonable construction in order to effect its remedial purpose".[3]

Can any reasonable argument be made that when the broad congressional policy in ERISA of the protection of workers' health and pension benefits is combined with the broad federal and state legislative policy of the protection

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[2] The *Fleischmann* case obviously concerns a federal materialmen statute. Similarly, the California Supreme Court had previously recognized the important status of liens in California. In *Connolly Development v. Superior Court*, 17 C.3d 803, 808, 132 Cal. Rptr. 477 (1976), that Court noted that "no other 'creditor remedy' enjoys such a constitutionally enshrined status" as do mechanics' liens. The strong state interest in mechanics' lien laws is shown by the fact that they were enacted in the very first session of the California Legislature. See *Tuttle v. Montford*, 7 Cal. 358, 360 (1857). Thus, identical public interests are at stake in federal and state lien statutes as both protect the employees' benefits.

[3] Indeed, ERISA preemption of state lien remedies does not protect property owners and general contractors from *all* materialmen statutes, as such *federal* materialmen laws (Miller Act claims) are not preempted by ERISA. See 29 U.S.C. 1144(d). If lien type rights on federal public works projects are not inimical to ERISA policies, it is difficult to fathom how they are so harmful if they are maintained on state public works projects or on private works of improvement.

of workers through mechanics' liens and stop notices, the result is that the workers and the trusts that supply them with health and pension benefits are left protected by neither and without any effective remedy?

An even more unbelievable example of the irrationality of ERISA preemption of liens is that collectively bargained trust funds that are *not* ERISA benefit plans (such as industry promotion funds) may continue to file liens because ERISA obviously does not preempt their liens. Hyperbole aside, what rational person can with a straight face say that Congress knowingly intended to remove the protection of state lien rights from employee benefit plans that need it the most, when other collectively bargained trust funds (not employee benefit plans) that do not require as much protection for they have no "participants" still maintain their lien rights.

It has been said that ERISA trust funds are "something of the darlings of Congress". *Benson v. Brower's Moving & Storage*, 726 F. Supp. 31, 34 (E.D. N.Y. 1989), aff'd 907 F.2d 310 (2d Cir. 1990) *cert. denied*, 111 S.Ct. 511 (1990). Can it legitimately be argued that Congress secretly inserted a poison of ERISA preemption of state collection remedies to destroy its "darlings" in their prime? Can their unannounced and unperceived at the time subversion (through preemption) of the ability of ERISA trust funds to protect their participants and meet the Congressional goal of providing benefits to their participants truly have been within Congressional intent?

To the extent that "the language of the Act, if construed literally, evidently leads to an absurd result, . . . the Act must be so construed so as to avoid the absurdity . . . The object designed to be reached by the Act must limit and control the literal import of the terms and phrases employed." *Holy Trinity, supra*, 143 U.S. at 460. [See *FDIC v. Elefant*, 790 F.2d 661, 666 (7th Cir. 1986) statutory language "however 'plain' " shall not be

interpreted in a way which "undermines what Congress set out to achieve."]

It is time for this Court to put an end to the effort to subvert the purposes of ERISA by using it to try and destroy the collection remedies of the employee benefit plans regulated, maintained and supposedly nurtured thereunder. This Court surely must reject the argument that ERISA preempts state mechanics' lien laws for the absurdity that it is when viewed against the policy and purposes of the statute. There is simply no basis for a reasonable assertion that Congress intended ERISA to preempt such state collection remedies. Employee benefit plans, the employers who contribute to them, and the employees who rely on them all cannot be abandoned by the statute designed to protect them.

CONCLUSION

For the reasons stated above, this Court must grant the Petition for Writ of Certiorari and reverse the decision of the California Supreme Court.

Respectfully submitted,

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Dated: October 15, 1991

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No. 91-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the California Supreme Court

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE LABORERS TRUST FUNDS AND OPERATING ENGINEERS TRUST FUNDS IN SUPPORT OF PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-480

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the California Supreme Court

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Laborers Health and Welfare Trust Fund for Southern California; Construction Laborers Pension Trust for Southern California; Laborers Training and Retraining Trust for Southern California; and Construction Laborers Vacation Trust for Southern California ("Laborers Trust Funds"); and Operating Engineers Pension Trust; Operating Engineers Health and Welfare Fund; Operating Engineers Vacation-Holiday Savings Trust; and Operating Engineers Training Trust ("Operating Engineers Trust Funds") move for leave to file the attached brief *amici curiae* in support of granting the petition for certiorari in this case.

The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested and refused.

The Laborers Trust Funds and Operating Engineers Trust Funds have an interest in this case since they collect a substantial portion of the contributions owed from employers through the use of the mechanics lien law found preempted by the court below. If this decision is allowed to stand, they may lose millions of dollars annually in contributions which are needed to fund the benefits to tens of thousands of participants and their families.

The Laborers Trust Funds and the Operating Engineers Trust Funds wish to raise the following arguments not raised, or not discussed in detail by petitioner, and not dealt with by the court below:

1) The conflict among the lower courts not only as to whether mechanics liens are preempted, but the differing and conflicting *rationales* for such preemption.

2) The serious financial effect on trust funds such as the Laborers Trust Funds and the Operating Engineers Trust Funds, and the beneficiaries who rely on them.

3) The disruption of the interrelated network of state and federal laws protecting wages and fringe benefits which will result from the holding below.

4) The intent of Congress to preserve state remedies for collection of wages and fringe benefits.

Respectfully submitted,

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Dated: October 15, 1991

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EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the California Supreme Court

---

BRIEF *AMICI CURIAE* OF THE LABORERS TRUST FUNDS AND OPERATING ENGINEERS TRUST FUNDS IN SUPPORT OF PETITIONER

INTEREST OF AMICI

The Laborers Health and Welfare Fund for Southern California; Construction Laborers Pension Trust for Southern California; Construction Laborers Vacation Trust for Southern California; and Laborers Training and Retraining Trust for Southern California ("Laborers Trust Funds"); and the Operating Engineers Pension Trust; Operating Engineers Health and Welfare Fund; Operating Engineers Vacation Holiday Savings Trust; and Operating Engineers Training Trust ("Operating Engineers Trust Funds"), *amici curiae*, urge that the Petition for a Writ of Certiorari to the California Supreme Court of Carpenters Southern California Administrative Corporation be granted. The Laborers Trust Funds and the Operating Engineers Trust Funds are each multi-employer, employee benefit plans, as defined in

the Employee Retirement Income Security Act (ERISA) §§ 2(3) and 2(37)(A), 29 U.S.C. §§ 1002(3) and 1002(37)(A).

The Laborers Trust Funds and the Operating Engineers Trust Funds rely upon contributions from participating employers to fund benefits provided by each plan, and each utilizes the mechanics liens allowed by California Civil Code § 3111, and similar remedies which may be affected by this decision, as the primary method of collecting delinquent contributions. The Laborers Trust Funds have approximately 26,000 participants in Southern California. The Operating Engineers Trust Funds have approximately 38,000 participants in Southern California. Together, these trust funds collect several million dollars annually through the use or threat of mechanics liens. If the decision of the California Supreme Court is not reversed, this remedy to recover contributions to *amici* will be eliminated, significantly impacting their ability to provide the benefits promised under each plan.

SUMMARY OF ARGUMENT

There is a split of authority among the state high courts and federal courts of appeals as to whether state mechanics liens are preempted by ERISA. This split is not only as to whether such liens are preempted, but also as to the rationale and extent of such preemption. The state mechanics liens are but one part of a state and federal network of laws designed to place the highest priority on payment of fringe benefit contributions, along with wages, which Congress intended to strengthen by the enactment of ERISA. The court below ignored relevant legislative history, and focused instead on legislative history irrelevant to this question. The decision of the California Supreme Court, and other courts following its lead, would destroy the complementary design of this network of laws, contrary to the express intent of Congress. The result will be a serious weakening of the

financial strength of employee benefit plans and the benefits they provide to millions of American workers.

REASONS THE WRIT SHOULD BE GRANTED

I. THE GUIDANCE OF THIS COURT IS NEEDED TO RESOLVE A SPLIT OF AUTHORITY AMONG LOWER APPELLATE COURTS ARISING FROM DIVERGENT INTERPRETATIONS OF THIS COURT'S DECISIONS ON ERISA PREEMPTION

In the case below, the California Supreme Court held that California Civil Code § 3111[1] was preempted by ERISA § 514, 29 U.S.C. § 1144. *Carpenters Southern California Administrative Corporation v. El Capitan Development Co.*, 53 Cal. 3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 (1991). More recently, a divided panel of the Ninth Circuit Court of Appeals similarly held § 3111 to be preempted. *Sturgis v. Herman Miller, Inc.*, —— F.2d ——, 60 U.S.L.W. 2185 (9th Cir. 1991) (petition for rehearing pending).

Other courts have joined California in finding similar state mechanics lien laws to be preempted.[2] On the other

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[1] California Civil Code § 3111 provides:

> For the purposes of this chapter [relating to mechanics liens], an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on a particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

[2] *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir.), *cert. denied*, 110 S.Ct. 3272 (1990) (Louisiana mechanics lien law); *McCoy v. Massachusetts Institute of Technology*, 760 F. Supp. 12 (D. Mass 1991); *Laborers National Pension Fund v. Woodrow Wilson Construction Co.*, 581 So.2d 387 (La. App. 1991). *Edwards v. Bethlehem Steel Corp.*, 554 N.E.2d 833 (Ind. App. 1990); *Prestridge v. Shinault*, 552 So.2d 643 (La. App. 1989).

hand, some courts have upheld mechanics lien laws against claims of ERISA preemption.[3]

The courts are split, not only as to whether or not mechanics lien laws are preempted, but as to the rationale behind their decisions. Each court has seized upon different statements in the opinions of this Court to reach different and conflicting rationales to support their decisions.

In the decision below, the California Supreme Court emphasized that § 3111, as distinguished from the general mechanics lien section, § 3110,[4] was "specifically designed to affect employee benefit plans." Relying upon

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[3] *Plumbers Local 458 Holiday Vacation Fund v. Immel*, 151 Wis. 2d 233, 445 N.W.2d 43 (Wis. App. 1989); *see also Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association*, 221 Cal. App. 3d Supp. 21, 270 Cal. Rptr. 608 (1990) (overruled by *El Capitan*); *Carpenters Health & Welfare Trust Fund v. Parnas*, 176 Cal. App. 3d 1196, 222 Cal. Rptr. 668 (1986) (overruled by *El Capitan*). In *Laborers National Pension Fund, supra*, note 2, the lien by the union for dues and savings was found *not* to be preempted while the liens by ERISA trust funds were found to be preempted. 581 So.2d 387, 392.

[4] California Civil Code § 3110 provides:

> Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-contractor, architect, builder, or other person having a charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

language of this Court in *Mackey v. Lanier Collection Agency & Service*, 486 U.S. 825, 829, 108 S.Ct. 2182, 100 L.Ed. 2d 836 (1988),[5] the California Supreme Court found this to be determinative.

The Wisconsin Supreme Court, relying on the same language in *Mackey*, distinguished the Wisconsin mechanics lien law from that of California, since it was not specifically directed to employee benefit plans. *Plumbers Local 458 Holiday Vacation Fund v. Immel*, 151 Wis. 2d 233, 445 N.W.2d 43, 46 (Wis. App. 1989).

The Indiana Supreme Court, however, found its mechanics lien law to be preempted despite the fact that like the Wisconsin law, it did not mention employee benefit plans at all and was brought by individual employees rather than the plans. *Edwards v. Bethlehem Steel Corp.*, 554 N.E.2d 833, 836-37 (Ind. App. 1990). The Indiana court relied on *Pilot Life Insurance v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987), and never mentioned *Mackey*. The Louisiana Court of Appeals similarly found its Public Works Act (the equivalent of a mechanics lien on public works) preempted despite the fact that the law did not mention ERISA trust funds. *Laborers National Pension Fund v. Woodrow Wilson Construction Co.*, 581 So.2d 387, 391 (La. App. 1991).

Each of these courts purports to rely on decisions of this Court in arriving at their decision. However, the rationales used, and the results arrived at, are widely divergent. Especially unclear is the fate of mechanics lien laws (or indeed *any* creditors' remedy) of general application which may be used by ERISA funds. In Wisconsin such laws are not preempted. In Indiana and Louisiana, they are preempted. In California, this is still an open

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[5] "[W]e have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are preempted under § 514(a)."

question.[6] The availability of these remedies is of vital importance to ERISA plans. The guidance of this Court is needed to establish a uniform approach to the preemption of mechanics liens, and other creditor remedies, available for the collection of delinquent contributions to ERISA plans.

II. THE MECHANICS LIENS FOUND PREEMPTED BY THE COURT BELOW ARE AN ESSENTIAL TOOL ASSURING CONTRIBUTIONS TO PROVIDE BENEFITS TO WORKERS IN THE CONSTRUCTION INDUSTRY

The effect of eliminating mechanics liens from the remedies available to trust funds in collecting contributions should not be underestimated. The U.S. Census Bureau reports nearly 25 billion dollars paid towards fringe benefits by employers in the construction industry in 1987. U.S. Census Bureau, Census of Construction Industries, Geographic Area Series, United States Summary, Report No. CC87-A-10, Table 5 at page 10. Contributions to fringe benefit funds constitute a major portion of the overall compensation of construction workers. The Census Bureau report cited above shows approximately one-fifth of compensation paid through fringe benefits for all employees in the construction industry. In the contract under which the Laborers Trust Funds operate, approximately 36% of compensation is paid through fringe benefit contributions. In the contract under which the Operating Engineers Trusts operate, approximately 26.5% of compensation is paid through fringe benefit contributions.

The collection of delinquent employer contributions is considered by the Department of Labor to be an affirmative duty of trustees. Prohibited Transaction Class Exemption 76-1, 41 F.R. 12740 (Dep't of Labor,

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[6] *Amici* have, in fact, begun filing mechanics liens under the general section of the mechanics lien law, § 3110, rather than § 3111, since *El Capitan*. Whether these liens are preempted has not yet been tested in the California courts.

3/25/76). "Plans which do not establish and implement collection procedures which are reasonable, diligent and systematic may be found to be engaging in prohibited transactions under sections 406 and 407(a) of the [Employee Retirement Income Security] Act and section 4975(c)(1) of the [Internal Revenue] Code in failing to collect delinquent contributions." *Id.* at 12741. Among the "reasonable, diligent and systematic methods for the collection of delinquent employer contributions" approved by the Department of Labor are "the purchase of bonds by employers to guarantee the payment of contributions to a plan, or the institution of various forms of appropriate legal action." *Id.*

Amici consider the use of mechanics liens a major tool in meeting their obligation to use diligent efforts to collect delinquent employer contributions. Without it, a significant amount of delinquent contributions will never be collected. This Court has noted "the uniquely temporary, transitory, and sometimes seasonal nature of much of the employment in the construction industry." *Jim McNeff, Inc. v. Todd*, 461 U.S. 260, 266, 103 S.Ct. 1753, 75 L.Ed.2d 830 (1983). Employers in the construction industry frequently go out of business, leaving no significant assets upon which to enforce a direct judgment for delinquent contributions. Mechanics liens are often the *only* source of recovery. *Amici* estimate they will lose several million dollars yearly without mechanics liens. The loss of this method of collection will have a noticeable and significant impact on the financial health of employee benefit plans in the construction industry.

III. STATE MECHANICS LIEN LAWS ARE AN INTEGRAL PART OF A NETWORK OF STATE AND FEDERAL LAWS PROTECTING THE WAGES OF WORKERS, INCLUDING THE PORTION OF WAGES ALLOCATED TO FRINGE BENEFITS

The California Supreme Court viewed § 3111 in isolation as a law which singles out ERISA plans. In fact though, § 3111 is but one part of a network of state and

federal laws establishing the priority of wages and fringe benefits, which Congress had no intention of disturbing.

Since biblical times,[7] our laws have recognized the special priority of a wage-earner's compensation among other debts. The California mechanics lien law was passed in the very first legislative session of this state.[8] It is firmly established in the Constitution of the State of California. Cal. Const. Art. XIV, § 3.[9]

By 1965, the trend of deferring part of a worker's overall compensation to fringe benefits had become prevalent in the construction industry. Recognizing this fact of modern compensation practices, the California legislature added subsection (d) to California Civil Code § 1182 (the predecessor of §§ 3110 and 3111) to make sure that fringe benefit contributions would be *included* rather than *excluded* from the wage package insured through mechanics liens. Cal. Stats. 1965, ch. 737, § 1 at 2148. This subsection was then codified in what is now § 3111, in 1969. Cal. Stats. 1969, ch. 1362, § 2 at 2761. The California legislature did not add any new substantive rights or causes of action by the amendment to § 1182, but merely recognized fringe benefits as part of the "value of labor" which had always been guaranteed by mechanics liens. *See Connolly Development, Inc. v. Superior Court,*

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[7] "Thou shalt not oppress a hired servant that is poor and needy, whether he be of thy brethren, or of the strangers that are in thy land within thy gates. In the same day thou shalt give him his hire, neither shall the sun go down upon it; for he is poor, and setteth his heart upon it; lest he cry against thee unto the Lord, and it be sin in thee." Deuteronomy 25:14-15.

[8] Cal. Stats. 1850, ch. 87, §§ 1-14 at 211-13; *see* Carey McWilliams, *California: The Great Exception* at 128 (1949).

[9] "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."

17 Cal. 3d 803, 827, 132 Cal. Rptr. 477, 553 P.2d 637 (1976), *appeal dismissed*, 429 U.S. 1056 (1977) ("The laborer and materialman have an interest in the specific property subject to the lien since their work and materials have enhanced the value of that property.") Nor does the mechanics lien law interfere in any way with the underlying obligation, as stated explicitly in another section of the mechanics lien law.[10]

On public works in California, § 3111 similarly provides the basis for the guarantee of payment of fringe benefits as part of the total compensation through a stop notice and payment bond. Cal. Civ. Code §§ 3181 and 3226. Contractors licensed in this State are required to maintain a bond which, among other things, guarantees the payment of fringe benefit contributions. Cal. Bus. & Prof. Code § 7071.5; *see Carpenters Southern California Administrative Corporation v. D & L Camp Construction Co.*, 738 F.2d 999 (9th Cir. 1984).

Congress completed the safety net for wages in the construction industry by passing the Miller Act, 40 U.S.C. § 270a, *et seq.*, requiring a bond on federal construction projects to guarantee the payment of wages. This Court held in *United States v. Carter*, 353 U.S. 210, 216-21, 77 S.Ct. 793, 1 L.Ed.2d 776 (1957), that Miller Act bonds guaranteed the payment of contributions to employee benefit plans as part of the employee's wages, and that the trustees had standing to assert these claims. The Court noted that the Miller Act was designed to supplement existing protections afforded by the states on non-federal jobs:

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[10] California Civil Code § 3152 provides that:

"Nothing in this title affects the right of a claimant to maintain a personal action to recover a debt against the person liable therefor either in a separate action or in the action to foreclose the lien, nor any right the claimant may have to the issuance of a writ of attachment or execution to enforce a judgment by other means."

> "The Miller Act represents a congressional effort to protect persons supplying labor and material for the construction of federal public buildings *in lieu of the protection they might receive under state statutes* with respect to the construction of nonfederal buildings. The essence of its policy is to provide a surety who, by force of the Act, must make good the obligations of a defaulting contractor to his suppliers of labor and material." *Id.* 353 U.S. at 216-17 (emphasis added).

In a receivership or other assignment for the benefit of creditors, wages and fringe benefit payments are given a priority under California Code of Civil Procedure § 1204.[11] This section was amended for the specific pur-

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[11] "When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him, or when any property is turned over to the creditors of a person, firm, association or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

"(a) Allowed unsecured claims for wages, salaries, or commissions, including vacation, severance and sick leave pay:

"(1) Earned by an individual within 90 days before the date of the making of such assignment or the taking over of such property or the commencement of such court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but only

"(2) To the extent of two thousand dollars ($2,000) for each such individual;

"(b) Allowed unsecured claims for contributions to employee benefit plans:

"(1) Arising from services rendered within 180 days before the date of the making of such assignment or the taking over of such property or the commencement of such court proceeding or the date of cessation of the debtor's business, whichever occurs first; but only

"(2) For each such plan, to the extent of:

"(i) The number of employees covered by such plan multiplied by two thousand dollars ($2,000); less

"(ii) The aggregate amount paid to such employees under subdivision (a) of this section, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan . . . ."

pose of conforming to the priorities under the Bankruptcy Code, 11 U.S.C. § 507(a)(4).[12]

Thus, the state and federal legislatures each enacted these laws with the other in mind, in order to assure a *uniform* treatment of wages and fringe benefits as priorities under both jurisdictions. Congress enacted the Miller Bond Act to provide workers on federal projects the same protection as workers on private and state projects. California amended its priorities under state receiverships and assignments in order to provide the identical priorities as in federal bankruptcy proceedings. Contributions to fringe benefit funds was included in each as part of the protected compensation, either by court interpretation or by statute.

The decision of the court below, however, throws a monkey wrench into this system. Although only directed at § 3111, the holding of the California Supreme Court could apply just as well to laws such as California Business & Professions Code § 7071.5 and California Code of Civil Procedure § 1204, which, like § 3111, refer specifically to employee benefit plans in order to insure that they are included as part of the "wages" these sections protect. This is not mere speculation; these statutes are currently being challenged on those precise grounds, based on the holding of *El Capitan*.[13]

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[12] This statute formerly did not have any reference to fringe benefits. The California Supreme Court interpreted "wages" as including contributions to employee benefit funds. *Dunlop v. Tremayne*, 62 Cal.2d 427, 429-31, 42 Cal. Rptr. 438, 398 P.2d 774 (1965). The statute was subsequently amended to its present form in order provide the identical priorities for wages and fringe benefit contributions as the new Bankruptcy Act. Cal. Stats. 1979, ch. 394.

[13] A case is currently pending before the Appellate Department of the Los Angeles Superior Court in which California Business & Professions Code § 7071.5 is challenged as preempted by ERISA. *Carpenters Southern California Administrative Corporation v. Havens*, L.A.S.C. Case No. CIV A-18045.

This will result in absurd disparities in the protections of wages and fringe benefits. A worker on a private construction project who has part of wages deferred to contributions to an ERISA plan will have no protection for those contributions, while another worker on the job who participates in a non-ERISA fringe benefit arrangement will retain the right to a lien for full compensation, as will the workers across the street on a federal project. Workers whose employer goes through a receivership or an assignment to creditors will have no priority reserved for health and pension contributions, although they would if the employer had filed a bankruptcy petition instead.

The existing system of state and federal laws guaranteeing the payment of wages and benefits to employees through liens, bonds and priorities is of sufficient importance to warrant this Court's review before they are mangled beyond recognition in the name of federal preemption.

IV. THE DECISION OF THE CALIFORNIA SUPREME COURT WOULD SINGLE OUT AND DISCRIMINATE AGAINST EMPLOYEE BENEFIT PLANS, CONTRARY TO THE INTENT OF CONGRESS

"[T]he question whether a certain state action is preempted by federal law is one of congressional intent. ' " The purpose of Congress is the ultimate touchstone." ' " *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 45, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987), quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985), quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978), quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963).

As illustrated by the above chain of citations, preemption analysis under ERISA (*Pilot Life*) has its roots in the preemption cases under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185 (*Allis-Chalmers*, *Malone* and *Retail Clerks*). This is no acci-

dent. Congress specifically referred to the broad sweep of preemption under § 301 in enacting ERISA in 1974:

> "All such actions [under ERISA § 502(a)] in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947." H.R. Conference Report No. 93-1280 at 327 (1974).

"Congress was well aware that the powerful preemptive force of § 301 of the LMRA displaced all state actions for violations of contracts between an employer and a labor organization, even when the state action purported to authorize a remedy unavailable under the federal provision." *Pilot Life, supra*, 481 U.S. 41 at 55. In fact, § 301 had been the basis for collecting delinquent plans prior to ERISA. *See Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 80 S.Ct. 489, 4 L.Ed.2d 442 (1960) (trustees are third party beneficiaries of collective bargaining agreement).

In all the time that § 301, with its own broad preemptive power, had been the basis for collecting delinquent contributions, not once had § 301 been held to preempt state remedies providing for liens, priorities, bonds, or other ancillary methods of collecting wages and fringe benefits. These laws also "authorized a remedy unavailable under the federal" law, yet they coexisted with these federal laws at the time ERISA was passed in 1974. Congress had no intention of altering the state of preemption under § 301, and said as much in the final paragraph of the ERISA preemption section:

> "(d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1337(b) of this title) or any rule or regulation issued under any such law."

Thus, when Congress referred to the preemptive effect of the LMRA in adopting ERISA's preemption provisions,

it had no reason to believe that such preemption would extend to liens, priorities, bonds, or other ancillary methods of collecting fringe benefit contributions. The provisions of the LMRA, including the case law developed under them, were specifically preserved by ERISA § 514(d), 29 U.S.C. § 1144(d). "There is no evidence in the legislative history that Congress found fault with the court's application of 29 U.S.C. § 185(a) to lawsuits involving pensions or that it intended to render that application obsolete." *Bugher v. Feightner*, 722 F.2d 1356, 1359 (7th Cir. 1983), *cert. denied*, 469 U.S. 822 (1984) (right to jury trial in suit to collect delinquent contributions under ERISA same as in § 301 suit). There is simply no basis for ascribing a congressional intent to preempt mechanics lien laws which had coexisted with § 301 by the enactment of ERISA in 1974.

The court below, however, ascribes such an intent, relying on the discussion of the legislative history in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 52-54, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). In *Pilot Life*, this Court held that the civil enforcement scheme for benefit claims by participants was meant by Congress to be exclusive. 481 U.S. at 52-54. *Pilot Life* did not deal with enforcement of the obligation to contribute by employers. The significant fact which the California Supreme Court overlooked is that *the "civil enforcement scheme" of ERISA § 502(a), as originally enacted, did not provide a mechanism for collection of delinquent contributions*, as it did for the enforcement of benefit claims. Although Congress has been accused of flights from reason, it would make no sense at all to conclude that Congress intended to preempt all state law remedies to assure the payment of contributions, without providing any federal remedy, in a law whose stated purpose was to strengthen and guarantee these same employee benefit plans.

The California Supreme Court points to ERISA § 502(a)(3)(B)(ii), 29 U.S.C. § 1132(a)(3)(B)(ii), as the

source of a federal claim for relief under ERISA to collect delinquent contributions prior to 1980.[14] However, that subsection provides an ambiguous cause of action at best. The "provisions of this title" at the time ERISA § 502 was adopted imposed no obligation to contribute to employee benefit plans. The obligation to contribute was usually found in the collective bargaining agreement, not necessarily "the terms of the plan" which could be enforced through ERISA. Reading this section to provide a federal claim for delinquent contributions would also create a conflict with LMRA § 301. This provision of ERISA is among those over which the federal courts were to have *exclusive* jurisdiction under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). Section 301 of the LMRA, on the other hand, allowed concurrent jurisdiction between state and federal courts. *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 101, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962). In any case, actions to collect delinquent contributions continued to be brought under LMRA § 301 before 1980. *See, e.g., Audit Services, Inc. v. Rolfson*, 641 F.2d 757, 760 (9th Cir. 1981); *Seymour v. Hull & Moreland Engineering*, 605 F.2d 1105, 1109 (9th Cir. 1979).

In fact, it was Congress' dissatisfaction with the defenses and remedies in court cases brought under LMRA § 301 which was among the reasons for enacting the Multi-Employer Pension Plan Amendments Act of 1980, 94 Stat. 1209, et seq. "Recourse available under current law for collecting delinquent contributions is insufficient and unnecessarily cumbersome and costly." 126 Cong. Rec. 23039 (1980) (remarks of Rep. Thompson). Representative Thompson, one of the House Managers of the

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[14] "[a] civil action may be brought— . . . [¶] (3) by a participant, beneficiary, or *fiduciary* . . . (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan or (B) to obtain other appropriate relief (i) to redress such violations or (ii) *to enforce the provisions of this title or the terms of the plan.*" Quoted in *El Capitan*, 282 Cal. Rptr. 277 at 283, 811 p.2d 296 at 302 (emphasis supplied in *El Capitan* decision).

bill, went on to list those cases which the Conference Committee approved [15] and disapproved.[16] It is significant to note that all of the cited cases were decided under LMRA § 301, not ERISA.

Congress' solution was to "clarify the law in this regard by providing a *direct unambiguous ERISA cause of action* to a plan against a delinquent employer." *Id.* (emphasis added). Obviously, Congress did not believe a direct, unambiguous ERISA cause of action to exist prior to these amendments. "The bill imposes a federal statutory duty to contribute on employers already contractually obligated to make contributions to multi-employer plans." Staff Report of the Senate Committee on Labor and Human Resources, S. 1076, 96th Cong., 2d Sess. at 44 (1980).

Section 515 was added to ERISA to provide an express claim for relief under ERISA for delinquent contributions:

> "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement."

Section 502 was also amended at the same time to add provisions for interest, liquidated damages, attorneys fees, costs, and other relief in the enforcement of the obligation to contribute. 29 U.S.C. § 502(g)(2). These provisions were not intended to be merely duplicative of

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[15] *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 80 S.Ct. 489, 4 L.Ed.2d 442 (1960); *Huge v. Long Hauling Co.*, 590 F.2d 457 (3rd Cir. 1978), *cert. denied*, 442 U.S. 918 (1979); *Lewis v. Mill Ridge Coals, Inc.*, 298 F.2d 552 (6th Cir. 1962).

[16] *Washington Area Carpenter Welfare Fund v. Overhead Door Co.*, 488 F. Supp. 816 (D.C. D.C. 1980), *rev'd*, 681 F.2d 1 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 926 (1983); *Washington Laborers-Employers Health & Security Trust Fund v. McDowell*, 103 L.R.R.M. 2219 (W.D. Wash. 1979).

the remedies already provided under § 301 of the LMRA, but were a "potent new weapon previously unavailable to plans under § 301 of the LMRA." *Laborers Health & Welfare Trust v. Advanced Lightweight Concrete*, 484 U.S. 539, 549 n.16, 108 S.Ct. 830, 98 L.Ed.2d 936 (1988). The stated purpose was to "promote the prompt payment of contributions and assist plans in recovering the costs incurred in connection with delinquencies." Staff Report of the Senate Committee on Labor and Human Resources, S. 1076, 96th Cong., 2d Sess. at 44 (1980).

It is thus the legislative history of the 1980 amendments, which first provided an ERISA remedy for delinquent contributions, which must be examined to determine if Congress intended to preempt state mechanics lien laws, not the 1974 Act which had no such provisions. In fact, the legislative history of the 1980 amendments specifically address the intent of Congress regarding preemption:

> "The Bill preempts any state or other law which would prevent the award of reasonable attorneys' fees court costs or liquidated damages, or which would limit liquidated damages to an amount below the twenty percent level. However, the bill does not preclude the award of liquidated damages in excess of the twenty percent level if an award of such a higher level of liquidated damages is permitted under state or other law. *The Committee Amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multiemployer contributions.*" House Report No. 96-869 (II) on H.R. 3909 of the House Committee on Ways and Means, 96th Cong., 2d Sess. (1980) (emphasis added).

Congress could not have been more clear. Even without such an explicit statement of intent, it is not difficult to see that preemption of state mechanics lien laws would be diametrically opposed to the purpose of the 1980 amendments.

By excluding contributions to ERISA plans from the value of labor guaranteed by the state mechanics lien law, it is the decision of the California Supreme Court itself which should be held preempted.[17] California "singles out ERISA employee welfare plans for different treatment under" the mechanic lien law, as interpreted by the California Supreme Court, by specifically excluding them. *Mackey v. Lanier Collections Agency & Service*, 486 U.S. 825, 830, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988). In *Mackey*, this Court found the portion of Georgia's garnishment law which specifically *exempted* ERISA pension plans from garnishment rights to be preempted because of this "different treatment" from other garnishees. *Id.*, 486 U.S. at n.4. The exclusion of contributions to ERISA plans from California mechanic liens should similarly be held preempted.

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[17] The preemption clause of ERISA broadly defines the "laws" it supersedes as including "decisions . . . having the effect of law" as well as actual legislative enactments. ERISA § 514(c)(1), 29 U.S.C. § 1144(c)(1).

CONCLUSION

The mechanics lien law found preempted by the court below is of vital importance to employee benefit plans, such as *Amici*, as a method of collecting contributions to provide the benefits for which the plans are designed. This decision affects not only the California mechanics lien law, but the entire network of state and federal laws designed to assure American workers payment of the full value of their labor, including the contributions to ERISA plans. It is the *exclusion* of contributions to ERISA plans from state property and collection laws which should be held preempted. Certiorari should be granted to clarify the law of ERISA preemption which has become muddled by the lower courts and threatens the very interests which ERISA was meant to protect.

Respectfully submitted,

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No. 91-480

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE TWENTY-SIX MULTI-EMPLOYER TRUST FUNDS IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The U.A. Local No. 467 Pension Trust Fund, U.A. Local No. 467 Health and Welfare Trust Fund, Northern California Plasterers Health and Welfare Trust Fund, Bay Area Pipe Trades Pension Trust Fund, Bay Area Pipe Trades Health and Welfare Trust Fund, U.A. Local No. 159 Defined Contribution Plan, U.A. Local No. 342 Defined Contribution Plan, U.A. Local Nos. 343 and 355 Defined Contribution Plan, U.A. Local No. 444 Defined Contribution Plan, Pipe Trades District Council No. 36 Pension Trust Fund, Pipe Trades District Council No. 36 Health and Welfare Trust Fund, U.A. Local No. 393 Pension Trust Fund, U.A. Local No. 393 Health and Welfare Trust Fund, Northern California Plastering Industry Pension Trust Fund, Plastering Industry Welfare Trust Fund, Lathers Local 65L Amended Pension Trust

Fund, Lathers Union Local 88L Pension Trust Fund, Lathers Local 109L Pension Trust Fund, Northern California Tile Industry Pension Trust Fund, Northern California Tile Industry Health and Welfare Trust Fund, Sign, Pictorial and Display Industry Pension Trust Fund, Sign, Pictorial and Display Industry Welfare Fund, I.B.E.W. Local Union No. 100 Pension Trust Fund, I.B.E.W. Local Union No. 100 Health & Welfare Trust Fund, Sheetmetal Workers of Northern California Health Care Plan, and Sheetmetal Workers of Northern California Pension Trust Fund (hereinafter the "Trust Funds") respectfully move this Court for leave to file the acompanying Brief of *Amici Curiae* in support of the Petition for Writ of Certiorari filed on September 16, 1991.

In support of this motion, the Trust Funds state as follows:

1. This motion is necessitated by the failure of Respondent, El Capitan Development Company, to give written consent to the filing of a brief by the *amici curiae* applicants herein. Petitioner, Carpenters Southern California Administrative Corporation, has consented to the filing of the accompanying Brief in the written consent filed herewith.

2. The Trust Funds are multi-employer trust funds established pursuant to the Labor Management Relations Act of 1947, § 302(c), as amended, 29 U.S.C. § 186, for the purpose of administering an employee benefit plan within the meaning of the Employee Retirement Income Security Act (hereinafter "ERISA"), §§ 3 and 4, 29 U.S.C. §§ 1002 and 1003. The Trust Funds are administered by Boards of Trustees, who are "fiduciaries" within the meaning of ERISA, 29 U.S.C. § 1002(21)(A), charged with the responsibility of administering the employee benefit plans and managing the disposition of their assets, including, among other things, securing the payment of rightful debts owed to the Trust Funds.

3. The Trust Funds seek leave to file the attached brief in order to make this Court aware of the grave implications of the decision of the California Supreme Court in *Carpenters Southern California Administrative Corporation v. El Capitan Development Corporation*, 53 Cal.3d 1041, 282 Cal.Rptr. 277, 811 P.2d 296 (Cal.S.Ct. 1991). The California Supreme Court's holding in *El Capitan* that ERISA preempts the California State mechanic's lien remedy is incorrect as a matter of law, and deserves review and reversal by this Court. The California Supreme Court's decision has undermined the financial stability of ERISA-regulated trust funds and has had a chilling effect on a number of other established state remedies available to ERISA-regulated trust funds.

4. These *amici curiae* applicants are in a unique position to advise the Court with regard to the impact of the *El Capitan* decision. The Trust Funds have collected approximately $9,000,000.00 over the last 8 years from mechanic's liens or similar state claims. These Trust Funds have pending California state causes of action which have been nor will be adversely affected by the California Supreme Court's decision. Without the use of the mechanic's lien, these Trust Funds will be unable to collect delinquent contributions owed to them.

WHEREFORE, the Trust Funds respectfully request that they be granted leave to file the accompanying Brief of *Amici Curiae*.

Respectfully submitted,

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act § 514(a), 29 U.S.C. § 1144(a) preempts employee benefit trust funds' ability to collect unpaid fringe benefit contributions required by collective bargaining agreements through the use of the state collection remedies of general application such as the mechanic's lien law in favor of the claimants named in California Civil Code § 3110 through § 3112.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-480

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

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BRIEF *AMICI CURIAE* OF THE TWENTY-SIX MULTI-EMPLOYER TRUST FUNDS IN SUPPORT OF PETITIONER

Come now the amici curiae U.A. Local No. 467 Pension Trust Fund, U.A. Local No. 467 Health and Welfare Trust Fund, Northern California Plasterers Health and Welfare Trust Fund, Bay Area Pipe Trades Pension Trust Fund, Bay Area Pipe Trades Health and Welfare Trust Fund, U.A. Local No. 159 Defined Contribution Plan, U.A. Local No. 342 Defined Contribution Plan, U.A. Local Nos. 343 and 355 Defined Contribution Plan, U.A. Local No. 444 Defined Contribution Plan, Pipe Trades District Council No. 36 Pension Trust Fund, Pipe Trades District Council No. 36 Health and Welfare Trust Fund, U.A. Local No. 393 Pension Trust Fund, U.A. Local No. 393 Health and Welfare Trust Fund, Northern California Plastering Industry Pension Trust Fund, Plastering In-

dustry Welfare Trust Fund, Lathers Local 65L Amended Pension Trust Fund, Lathers Union Local 88L Pension Trust Fund, Lathers Local 109L Pension Trust Fund, Northern California Tile Industry Pension Trust Fund, Northern California Tile Industry Health and Welfare Trust Fund, Sign, Pictorial and Display Industry Pension Trust Fund, Sign, Pictorial and Display Industry Welfare Fund, IBEW Local Union No. 100 Pension Trust Fund, IBEW Local Union No. 100 Health and Welfare Trust Fund, Sheetmetal Workers of Northern California Health Care Plan, and Sheetmetal Workers of Northern California Pension Trust Fund, and submit this brief in support of the petition for Writ of Certiorari in number 91-480.

INTEREST OF THE *AMICI CURIAE*

These amici curiae are multiemployer trust funds whose participating employers are subcontractors in the California construction industry. All of these trust funds are established pursuant to § 302(c) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186 (c) and maintain employee benefit plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq. ["ERISA"]. These amici curiae have the responsibility under law for collecting all fringe benefit contributions due to them as third party beneficiaries under the collective bargaining agreements between their participating employers and their participating labor organizations. They use these contributions to provide welfare and pension benefits to their participants and beneficiaries, in accordance with the terms of ERISA-regulated employee benefit plans.

California Civil Code § 3111 names trust funds such as these amici as being among the many claimants who have a lien right against real property in the state for collection of unpaid compensation due for the value of goods supplied to and services performed on "work of improve-

ment" as described in California Civil Code §§ 3128-31. The other permitted claimants are enumerated in California Civil Code §§ 3110 and 3112. The mechanic's lien remedy has a lengthy history in California. The mechanic's remedy has been a part of California law since 1850 and became part of the California Constitution in 1879. It provides an assurance that the working person, whether employed directly by the owner, or by a contractor or subcontractor, will receive his or her compensation for work that has contributed to a construction project from the value of the property itself, if the employer defaults. The California mechanic's lien law provides notice and other procedural requirements which serve to balance the rights of the property owner with the rights of those who have supplied labor and materials to the property. *Borchers Bros. v. Buckeye Incubator Co.*, 59 C.2d 234, 238, 28 Cal. Rptr. 697, 699 (1963), *Connolly Development, Inc. v. Superior Court*, 17 Cal.3d 803, 132 Cal. Rptr. 477 (1976).

The California mechanic's lien remedy is these amici trust funds' most important and most effective remedy for the collection of due but unpaid employer contributions. The California mechanic's lien gives the trust funds a powerful pre-judgment attachment remedy in those cases in which a construction employer has not made the contributions required by his labor agreement for work done by his employees on a project. In practice, the mechanic's lien enables these amici to reach funds due the delinquent employer from the owners of the property improved by the employees' labor. Since owners and general contractors typically withhold sufficient money to pay potential lien claimants until the short time allowed for enforcing the mechanic's lien has expired, the filing of a mechanic's lien in practice is a highly efficient and cost effective attachment remedy. In return for a release of lien, the trust funds collect an account receivable of the delinquent employer from the third party who owes the employer money. Frequently, due to employer insolvency, mechan-

ic's lien collections are the only source of recovery of the contributions due. Like all mechanic's lien claimants, the basis of the trust funds' claim is that the contractor has defaulted on its private contract obligation to the lien claimant. The mechanic's lien remedy thus puts employee benefit plans on the same footing with other providers of goods and services that improve real property. Without this powerful tool for the collection of fringe benefit contributions, these particular trust funds would not have collected over nine million dollars in the last several years and stand to lose millions of dollars in future contributions. This loss will have a severely detrimental impact on their ability to provide promised welfare and pension benefits to their participants.

The 1980 amendments to ERISA were supposed to assist trust funds in collecting delinquent fringe benefit contributions, not take away their most effective collection device. ERISA is supposed to preempt the regulation of and singling out of trust funds for special treatment, not eliminate collection remedies of general application. If the Court does not grant certiorari and reverse the opinion below, the trust funds' ability to collect fringe benefit contributions due will be adversely affected and lower courts will continue to misinterpret this Court's rulings in *Mackey v. Lanier Collection Agency Service, Inc., infra* and *Pilot Life Insurance Co. v. Dedeaux, infra.*

SUMMARY OF ARGUMENT

THE COURT SHOULD GRANT CERTIORARI IN THIS CASE BECAUSE THE CASE RAISES AN IMPORTANT QUESTION AND THE CALIFORNIA SUPREME COURT HAS MISINTERPRETED AND MISAPPLIED THIS COURT'S PRIOR DECISIONS IN *MACKEY v. LANIER COLLECTION AGENCY SERVICE, INC.* AND *PILOT LIFE INSURANCE CO. v. DEDEAUX*

The California mechanic's lien law is not preempted by ERISA § 514(a) because it does not single out ERISA-regulated employee benefit plans for any special treat-

ment. Instead it includes plans in a large list of enumerated claimants entitled to the lien, a longstanding state remedy providing for payment for the value of labor and materials provided to construction projects. Under the reasoning in *Mackey v. Lanier Collection Agency Service, Inc.*, discussed below, this state remedy should escape ERISA preemption as a collection remedy generally applicable to the entire class of persons and entities who are owed money for labor and services provided to construction projects.

Section 3111 of the California Civil Code does not "relate to" an employee benefit plan within the meaning of this Court's analysis in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). The California Supreme Court has overread the *Pilot Life Insurance Co.* decision by finding § 3111 preempted.

REASONS THE WRIT SHOULD BE GRANTED

I. THE COURT SHOULD GRANT CERTIORARI IN THIS CASE BECAUSE THE CALIFORNIA SUPREME COURT'S DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN *MACKEY v. LANIER.*

The California's mechanic's lien law, while a powerful prejudgment attachment remedy for the collection of fringe benefit contributions, does not increase the employer's obligation to contribute to the trust funds; that obligation is set solely by collective bargaining between the employer and a participating labor organization. The mechanic's lien doesn't regulate the administration of any plan or interfere with delivery of benefits. The lien is not given just to trust funds, but also to laborers, contractors, materialmen, and all other persons who improve real property in the State of California who have not been paid the contracted-for-price for their improvement of the property.

Section 514(a) of ERISA does not preempt state remedies to collect judgments. *Mackey v. Lanier Collection Agency and Service, Inc.*, 486 U.S. 825, 830, 108 S.Ct. 2182, 100 L.Ed.2d 836, 844 (1988). Rule 69 of the Federal Rules of Civil Procedure requires the use of state remedies to enforce judgments, including all state prejudgment attachment, claim and delivery, and other prejudgment collection remedies, as well as post-judgment enforcement procedures. State collection remedies of all sorts are therefore available to enforce federal obligations.

For these amici, whose fringe benefits are paid by employers who are subcontractors in the construction industry, the mechanic's lien is the most effective way of reaching the delinquent employer's accounts receivable. The employer's obligation is decreased by the amount collected from the mechanic's lien and litigation costs are kept to a minimum since a lawsuit is rarely needed to enforce their mechanic's lien right.

A. California Civil Code § 3111 Is Not Preempted by ERISA Because It Does Not Single Out Employee Benefit Plans for Special Treatment.

Civil Code § 3111 in effect simply allows trust funds to collect a portion of the construction workers' wages by using the state mechanic's lien remedy available to all persons who have improved California property. As such, it is unlike the Georgia garnishment statute which this Court found to be preempted by ERISA. The Georgia statute considered by this Court in *Mackey* provided a special exemption from the general state garnishment laws for ERISA-regulated welfare plans. The Court's rationale for holding this Georgia statute preempted was that it "singles out ERISA employee welfare benefits for different treatment under state garnishment procedures." This different treatment "is illustrated not only by the express reference to ERISA plans . . . but also in the disparate treatment accorded to non-ERISA welfare plans under

Georgia law." (ERISA plans were protected by the Georgia statute, but non-ERISA plans were not.) *Mackey, supra.*

Section 3111 does not create, interpret or enforce any provision of an employee benefit plan. Section 3111 does not cause employee benefits to be created or lost. Section 3111 does not create or change any employer contribution requirement. All that § 3111 does is place an obligation, in the nature of a security obligation, upon a property owner who is not a party to any employee benefit plan or any collective bargaining agreement, to pay money into a trust fund. Under Civil Code § 3153 of the mechanic's lien law, the owner of real property is entitled to withhold from the sum due the contractor, the amount of any lien for labor, services, equipment and materials. The sum being withheld to satisfy the lien can be deducted from the amounts due the contractor. *See, In re Flooring Concepts, Inc.*, 37 B.R. 957, 961-2 (9th Cir. Bkry. App. 1984).

The California Supreme Court in this case has erroneously interpreted the precedent of this Court to find that the decision in *Mackey v. Lanier, supra*, does not apply to shield § 3111 from preemption on the basis that it is in reality a state law remedy of general application. Instead, it has ruled that § 3111 "relates to" employee benefit plans within the meaning of § 514(a) as defined in *Pilot Life* and its progeny (a) because the statute expressly refers to employee benefit plans and (b) because the statute purportedly creates a new funding mechanism for plans. In fact, employee benefit plans are "related to" only in the sense of being included in a lengthy list of permitted lien claimants enumerated in California Civil Code §§ 3110-3112 (Appendix A). The permitted claimants include all those who are owed compensation on account of provision of labor and materials used to improve real property. "Express trusts" providing employee benefits are included in the list in acknowledgment

that they are the contractually-designated recipients of part of the compensation package for employees covered by collective bargaining agreements. California mechanic's lien rights may be, and freely are, assigned. To exclude employee benefit trusts from the permitted group of lien claimants would, completely unnecessarily, both undermine the collective bargaining rights of the covered employees guaranteed by Section 7 of the National Labor Relations Act and isolate ERISA-regulated employee benefit plans as the *only* party legally entitled to receive money due for work performed on a work of construction in California who does not share in the mechanic's lien remedy.

The majority of the California Supreme Court made much of the fact that these trusts do not themselves provide labor or materials. This is a totally specious analysis. These trusts exist for the sole purpose of serving participants, as required by 29 U.S.C. § 302(c). Their participants *do* provide labor on construction projects. The California Supreme Court's assertion that the mechanic's lien creates a new "funding mechanism" for employee benefit plans is equally spurious. The majority joining in the opinion in this case may, as they seem to, disapprove of the mechanic's lien as an unfair burden on real property. However, the lien is of ancient origin with stringent time limits and notice requirements to protect owners of real property. Section 3111 merely acknowledges employee benefit trust funds as the proper payee of part of the laborers' wage package. These express trusts are not creatures of a state regulation program affecting employee benefit plans; they were created by Congress with passage of the Taft-Hartley Act and have, accordingly, been a significant feature of multiemployer bargaining in the construction industry since 1947. To acknowledge their role in collective bargaining as a contractually named recipient of part of the laborers' wage in construction is not a singling out of plans for special treatment under State law, or a creation of a new fund-

ing mechanism. It is merely what it appears to be: inclusion of these trusts in a list of essentially like lien claimants. To exclude them will result in singling them out for unfair treatment.

The error of the California Supreme Court has recently been repeated in the Ninth Circuit Court of Appeals decision in *Sturgis, et al. v. Herman Miller, Inc., et al.* (9th Cir. Ct. App. No. 90-15054, 9-3-91), reprinted as Appendix B. The decision once again on the one hand distinguishes *Mackey* on the basis that the garnishment remedy it received was more "procedural" than the California mechanic's lien procedures. The Ninth Circuit on the other hand finds that § 3111 must be preempted under this Court's decision in *Pilot Life Insurance Co.* because it has a "reference to" or "connection with" an employee benefit plan. (Appendix B at pp. 7a-8a) Once again, this overreads the *Pilot Life Insurance Co.* decision by holding that "reference to" an employee benefit plan sufficient for § 514(a) preemption is present if employee benefit plans are merely included in a list of essentially like lien claimants. Once again, it wrongly distinguishes *Mackey* and "turns the logic of *Mackey* on its head" (*Sturgis*, Appendix B at p. 10a), in the eloquent dissent of Judge Pregerson:

> The majority errs by not viewing section 3111 in the context of California's general mechanic's lien laws. California creates mechanic's liens in favor of "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . ." Cal. Civ. Code § 3110. Section 3111 provides the same lien to employee benefit trust funds for unpaid employer contributions. California thus does not single out ERISA plans for special treatment, but gives ERISA plans the same procedure to recover unpaid employer

contributions as California gives to employees who are not members of ERISA plans.

Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opinion is that employees who are not members of ERISA plans may use mechanic's liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not. This turns the logic of *Mackey* on its head. *Mackey* precludes state laws that single out ERISA plans; it does not prohibit even-handed state-law enforcement procedures.

In addition to being claimants under mechanic's lien law, numerous of these amici also own real property in this state. The California Supreme Court's decision below creates the anomaly of allowing the mechanic's lien to be used against but not by ERISA-regulated trust funds. This clearly circumvents both the majority and minority opinion in *Mackey v. Lanier*, *supra*. The majority opinion in *Mackey* recognized the ability of trust funds to engage in common lawsuits for rent, torts, and so forth. The petitioner's mechanic's lien action is just such a lawsuit. Certainly, a result that the mechanic's lien can be used against ERISA funds but not by ERISA funds is not tolerable. The ability to "sue or be sued" under Section 502(a)(3) of ERISA surely requires the even handed application of state collection procedures. The minority opinion in *Mackey* was concerned that the onerous obligation of complying with Georgia's general garnishment procedures would disrupt the administration of plans and the delivery of benefits. The California mechanic's lien law is not at all invasive of plan administration or the delivery of benefits. It is merely a simple and effective tool for the collection of fringe benefit contributions due under a collective bargaining agreement.

This Court needs to reverse the decision of the California Supreme Court and clarify this issue to prevent

these amici from losing their very valuable ability to use mechanic's liens in cases where the fringe benefit portion of the laborers' wage has not been paid.

B. California Civil Code § 3111 Must Be Read in Context With California Civil Code § 3110.

When read in context with Civil Code § 3110, Section 3111 is merely a standing statute which gives trust funds the right to enforce construction workers' direct ability to collect contributions to pay for their fringe benefits established under Civil Code § 3110. The California legislature, in giving the trust funds standing to assert the employees' right, prevented superfluous litigation involving challenges to the trust funds' standing to pursue employee's mechanic's liens under § 3110 or the employee's ability to collect fringe benefits owed him just because the fringe benefits are paid to trust funds. Thus, by enacting this legislation, California avoided unnecessary challenges of the type reported in *United States ex rel. Sherman v. Carter*, 353 U.S. 210, 1 L.Ed.2d 776, 77 S.Ct. 793 (1957). When § 3111 is read in context with 3110, it is clear that the California statute does not single out ERISA plans for special or disparate treatment but is merely adding trust funds to the list of the many claimants who have the right to enforce obligations due to them through the use of the state mechanic's lien remedy.

C. Even if Civil Code § 3111 Is Preempted by ERISA, § 3110 Is Not So Preempted and the Trust Funds' Mechanic's Lien Right Should Be Upheld Under § 3110.

California Civil Code § 3110 (Appendix A) is similar to 40 U.S.C. § 270a of the Miller Act which requires those contractors on federal jobs to post a payment bond "for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract." Under the Miller Act, "every person who has furnished labor and material in the pros-

ecution of the work provided for in such contract . . . and who has not been paid in full therefor . . . shall have the right to sue on such payment bond . . . for the sums justly due him." This Court in *U.S. ex rel Sherman v. Carter*, *supra*, 353 U.S. at p. 216, 1 L.Ed.2d at p. 782 recognized that the "Miller Act represents a congressional effort to protect persons supplying labor and materials for the construction of federal public buildings in lieu of the protection they might receive under state statutes with respect to the construction of non federal buildings." In this case, the claimants were joint labor management employee benefit trust funds of exactly the same kind as the amici, and other trust funds who could enforce mechanic's liens in California under California Civil Code § 3110. Further, the claimed fringe benefits were payable to the claiming trusts as third party beneficiaries of a collective bargaining agreement exactly paralleled to the facts in this case. Although such "express trust funds" were not specifically named as Miller Act claimants, and although the fringe benefit contributions were due to the trust fund, not the employee, this Court found that "the unpaid contributions were a part of the compensation for the work to be done by Carter's employees" and "not until the required contributions have been made will Carter's employees be 'paid in full' for their labor in accordance with the collective bargaining agreements." (353 U.S. at 217, 1 L.Ed.2d at 783) Therefore, although the Miller Act does not expressly name trust funds as a Miller Act claimant, the trust funds stand in the shoes of their participants and can successfully sue the payment bond surety under the Miller Act. Likewise, even if there was no California Civil Code § 3111, petitioner could properly assert their participants' claims for fringe benefits due them under Section 3110. Since it is clear that § 3110 does not single out ERISA plans for special or disparate treatment or seek to regulate ERISA plans in any way, it is not preempted by ERISA and trust funds continue to have a valid lien claim under § 3110.

D. The California Mechanic's Lien Statute Creates No New Contribution Obligation.

Unlike the state statutes requiring payment of prevailing wages on public works or regulating apprenticeship programs, which are being struck down as preempted by ERISA by various Courts around the country, the California Mechanic's Lien Law does not add to an employer's obligation. See, e.g., *General Electric v. N.Y. Labor Dept.*, 891 F.2d 25 (1989), cert. denied —— U.S. ——, 110 S.Ct. 2603, 110 L.Ed.2d 283 (1990). *Hydrostorage Inc. v. Northern Boilermakers Local Joint Apprenticeship Comm.*, 891 F.2d 719 (9th Cir. 1989), cert. denied —— U.S. ——, 111 S.Ct. 72, 112 L.Ed.2d 46 (1990). The amount claimed in a mechanic's lien is determined by multiplying the hours actually worked on the property by a covered employee, by the rate set forth in the employer's collective bargaining agreement. The use of the mechanic's lien does not change or increase the employer's legal obligation to make payments to the trust funds. In fact, the trust funds' successful use of the mechanic's lien will reduce the amount the employer owes just like the lumber company's successful use of this remedy reduces the employer's material bill. In many instances, these amici have used the mechanic's lien with the express consent and assistance of their signatory subcontractors. Subcontractors can unfortunately fall victim to unscrupulous developers and general contractors who delay payment to the subcontractors and make meritless backcharges and other contract claims against the subcontractors whereas these same developers and general contractors cannot use these same meritless defenses against the trust funds mechanic's lien claim. It would be an absurd reading of ERISA indeed not to allow the employer's debt to the trust funds to be reduced by the use of the California mechanic's lien law, but to allow all of the employer's other contract debts arising out of work on the property to be so reduced. Yet, the California Su-

preme Court's decision below promotes such an arbitrary and discriminatory use of the statute.

II. THIS COURT SHOULD GRANT CERTIORARI IN THIS CASE TO PREVENT LOWER COURTS FROM MISAPPLYING ITS *PILOT LIFE* DECISION TO COLLECTION LAWSUITS.

The California Supreme Court has misinterpreted this Court's ruling in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). In *Pilot Life*, this Court correctly noted that *state claims against ERISA plans by participants or beneficiaries* are preempted by ERISA. This same reasoning does not apply to a plan's claim against non-ERISA parties.

The California Mechanic's Lien Law does not purport to regulate employee benefit plans and hence is not preempted by ERISA. The Mechanic's Lien Law does not create any additional obligation on the contributing employer or regulate the administration of the plans or delivery of benefits in any way. A Mechanic's lien only obligates the property owner to fully compensate individuals for the value for which his labor improved the property.

Although ERISA preemption is broad, it is not so broad as to preempt this state statute. California Civil Code § 3111 does not "relate to" an employee benefit plan within the meaning of Section 514 because (a) it does not regulate or in any way effect the terms, conditions or administration of employee benefit plans, now or hereafter and (b) it does not "relate to," "regulate" or affect in any other way the obligations and responsibilities of Trustees, administrators, employers, participants, and beneficiaries or any other party to an ERISA-regulated employee benefit plan. Rather § 3111 merely provides a means of collecting a portion of the plan participants' wages from property owners who are not parties to any collective agreement, against whom ERISA provides no

remedy, and who have no connection with any employee benefit plan and consequently are not ERISA parties.

CONCLUSION

As discussed above, the California Mechanic's Law is a state law of general application which gives the amici trust funds as well as suppliers of labor and materials to construction projects, generally, a pre-judgment attachment tool. It does not purport to regulate employee benefit plans in any way. Indeed, the California Supreme Court's ruling below singles out ERISA-regulated trust funds for disparate treatment since they will be the only parties who receive money payable on account of labor performed on a construction project who *cannot* use this collection remedy. Nothing in ERISA itself or its legislative history justifies this result. The Court should therefore issue the writ of certiorari and reverse the erroneous decision below.

Respectfully submitted,

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Dated: October 15, 1991

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APPENDICES

APPENDICES

APPENDIX A

RELEVANT CALIFORNIA CIVIL CODE PROVISIONS

A. Section 3110. [Enumeration of persons entitled]

Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-subcontractor, architect, builder, or other person having charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

B. Section 3111. [Trust fund for payment of fringe benefits supplemental to wage agreement]

For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

C. Section 3112. [Claimant making site improvement at instance or request of owner]

Any claimant who, at the instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise) of any lot or tract of land, has made any site improvement has a lien upon such lot or tract of land for work done or materials furnished.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 90-15054

D.C. No. CV-S-89-1273-LKK

M. C. STURGIS, *et al.*,
Plaintiff-Appellants,
v.

HERMAN MILLER, INC., NVE CONSTRUCTORS, INC.;
COLUMBIA STEEL FABRICATORS, INC., DOES 1-20;
DOE 16, LAWYERS SURETY COMPANY,
Defendant-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted April 12, 1991*
San Francisco, California

Filed September 3, 1991

Before: Harry Pregerson, John T. Noonan, Jr. and
David R. Thompson, Circuit Judges.

Opinion by Judge Thompson; Dissent by Judge Pregerson

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* The panel finds this case appropriate for submission without oral argument pursuant to Ninth Circuit Rule 34-4 and Fed. R. App. P. 34(a).

COUNSEL

Patrick M. Hevesy, Los Angeles, California, for the plaintiff-appellants.

Aldo Branch, and Richard M. Peekema, San Jose, California, for the defendant-appellees.

OPINION

THOMPSON, Circuit Judge:

This appeal presents the issue whether the Employee Retirement Income Security Act of 1974 ("ERISA") preempts a California statute that grants an employee trust, established pursuant to a collective bargaining agreement, a mechanic's lien to collect unpaid employer contributions due for employee fringe benefits. After finding that ERISA preempted the state lien statute, the district court dismissed an action brought by M.C. Sturgis and the other trustees of the California Field Ironworkers Trust Fund (the "Trustees") seeking to collect on a mechanic's lien release bond. We affirm.

FACTS

The Trustees administer the California Field Ironworkers Trust Funds. Columbia Steel Fabricators ("Columbia") was a signatory to a collective bargaining agreement requiring employer contributions for the pension, health, welfare, vacation and other benefits of each of its field ironworker employees. When Columbia did not make the contributions due for work done on property owned by a third party, the Trustees recorded a mechanic's lien on the property pursuant to California Civil Code § 3111. The Trustees then brought this action in California Superior Court to enforce the lien. Columbia and its surety posted a mechanic's lien release bond in favor of the Trustees. The Trustees amended the complaint to state a claim on the release bond, and dismissed all parties except Columbia and its surety.

Columbia and its surety removed the action to federal court, and moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion, holding that ERISA preempts California Civil Code § 3111. This appeal followed.

DISCUSSION

"ERISA § 514(a) pre-empts 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' covered by the statute." *Mackey v. Lanier Collection Agency and Service, Inc.*, 486 U.S. 825, 829 (1988) (quoting 29 U.S.C. § 1144(a)). ERISA preemption is not limited to "state law specifically designed to affect employee benefit plans." *Shaw v. Delta Airlines*, 463 U.S. 85, 98 (1983)). Instead, a state law "relates to" a benefit plan if it has a "connection with or reference to such a plan" whatever the state law's underlying intent. *Id.* at 97.

California Civil Code § 3111 permits the trustee of an express trust, established pursuant to a collective bargaining agreement requiring employer payments or supplemental fringe benefits, to acquire a mechanic's lien on real property for unpaid contributions. Cal. Civ. Code § 3111.[1]

Although Cal. Civ. Code § 3111 makes no explicit reference to ERISA (*cf. Mackey*, 486 U.S. at 829), the statute describes trusts established to receive employer's

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[1] California Civil Code § 3111 provides:

> For purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

Cal. Civ. Code § 3111 (West 1974).

contributions "on account of fringe benefits supplemental to a wage agreement." Cal. Civ. Code § 3111. Such trusts exist to implement employee benefit plans. Section 3111, therefore, must be construed as a law "specifically designed to affect employee benefit plans," *see Mackey*, 486 U.S. at 829. As such, it is "related to" ERISA, whether we interpret it as a statute which has a "reference" to an employee benefit plan or a "connection with" such a plan. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987); *see also Mackey*, 486 U.S. at 829.

Here, the Trustees argue Cal. Civ. Code § 3111 creates no state law cause of action or remedy, but instead provides merely a mechanism through which the trustees can collect what is due the trust. It thus resembles, the Trustees urge, the general garnishment statute upheld by the Supreme Court in *Mackey*.

In *Mackey*, a collection agency, acting pursuant to Georgia law, tried to levy writs of garnishment on an employee welfare benefit plan to intercept and collect vacation benefit money owed to the participants. Georgia had an antigarnishment statute which exempted from garnishment "[f]unds or benefits of [an] . . . employee benefit plan or program subject to [ERISA]." Ga. Code Ann. § 18-4-22.1 (1982). The Court held that even though this antigarnishment statute was enacted to "help effectuate ERISA's underlying purposes" it was nonetheless preempted by ERISA. *Mackey*, 486 U.S. at 829.

Once it found the antigarnishment statute preempted, the *Mackey* Court turned to an analysis of Georgia's general state garnishment statute. The Court concluded that ERISA did not preempt the general garnishment statute because the state statute provided a mere mechanism for the collection of judgments against plan participants. The Court noted that ERISA specifically provided that plans could "sue and be sued." *Id.* at 833. Because ERISA does not provide mechanisms to execute

judgments won against plans, the Court reasoned these mechanisms had to be supplied by state law. *Id.* at 834. Moreover, "[w]hen Congress provides by law that an entity may 'sue and be sued,' this includes 'all civil process[es] incident to . . . legal proceedings' including '[garnishment and attachment.'" *Id.* at 834 n.9 (quoting *FHA v. Burr*, 309 U.S. 242, 245-46 (1940)). Finally, the Court observed that "lawsuits against ERISA plans for run-of-the-mill state-law claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan . . . are relatively commonplace." *Id.* at 833. If attachment of ERISA plan funds to enforce judgments won in these kinds of actions do not relate to an ERISA plan, the Court reasoned, "we do not see how [the collection agency's] proposed garnishment order would do so." *Id.* at 834.

The Court was careful to point out, however, that under Georgia law,

> [G]arnishment is a "procedural" mechanism for the enforcement of judgments. Georgia's statute that provides for garnishment creates no substantive causes of action, no new bases for relief, or any grounds for recovery; the Georgia garnishment law does not create the rule of decision in any case affixing liability. Rather under Georgia law, postjudgment garnishment is nothing more than a method to collect judgments *otherwise* obtained by prevailing on a claim against the garnishee.

Id. at 835 n.10 (emphasis in original).

The gravamen of the Trustees' argument under *Mackey* is that just as the writ of garnishment in *Mackey* was a procedural device—a mere mechanism—to collect a debt, so is the mechanic's lien mechanism provided by Cal. Civ. Code § 3111. We disagree. Unlike the generally applicable garnishment statute reviewed in *Mackey*, section 3111 contains a clear reference to and connection

with ERISA. It singles out employee benefit plans for the specific purpose of according them lien rights on real property to collect delinquent employer contributions. In this reference to and connection with employee benefit plans, it resembles Georgia's preempted antigarnishment statute. True, Cal. Civ. Code § 3111 does not expressly use the term "ERISA" as the antigarnishment statute did in *Mackey*. But it need not do so where the statute obviously singles out ERISA plans. *Mackey*, 825 U.S. at 831. There can be no doubt that section 3111 accords ERISA plans a unique procedural benefit by conferring upon them special mechanic lien rights to collect delinquent contributions. Accordingly, ERISA preempts Cal. Civ. Code § 3111.[2]

AFFIRMED.

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[2] The Fifth Circuit in *Ironworkers Mid-South Pension Funds v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir. 1990), held that ERISA preempted a strikingly similar Louisiana statute. The court analyzed the Louisiana statute and ERISA preemption in terms of the substantive right created by the statute, as opposed to the enforcement mechanism discussed in *Mackey*, and the inclusion in ERISA of what the court stated were civil enforcement provisions which authorized collection by a fiduciary of obligations owed to the trust, authorization which the court concluded encompassed the civil enforcement provision of the Louisiana statute.

HARRY PREGERSON, Circuit Judge, Dissenting

In *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), the Supreme Court held that a Georgia statute exempting employee benefit plans from the reach of the state's general garnishment statute is pre-empted by ERISA. More importantly to this case, however, the Court also concluded that ERISA does not pre-empt Georgia's general garnishment statute. The Court explained that, because ERISA provides no procedures for the collection of judgments. "Congress did not intend to forbid the use of state-law mechanisms of executing judgments." *Id.* at 831. Because I believe the mechanic's lien provided by Cal. Civ. Code § 3111, like the garnishment procedure in *Mackey*, is not pre-empted by ERISA, I respectfully dissent.

The majority finds that section 3111 is pre-empted by ERISA because it "contains a clear reference to and connection with ERISA." Majority opinion at 12289. I do not read *Mackey*, however, to hold that a mere reference in a state statute to an employee benefit trust fund controls the pre-emption question. Rather, a careful reading of *Mackey* teaches us that the determinative pre-emption factor is whether the state-law enforcement procedure in question singles out ERISA plans for special treatment. *Mackey*, 486 U.S. at 830 ("we hold that [the Georgia statute], which singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures, is pre-empted") (footnote omitted); *id.* at 838 n.12 ("While we believe that state-law garnishment procedures are not pre-empted . . ., we also conclude that *any* state law which singles out ERISA plans, by express reference, for special treatment is pre-empted. It is this "singling out" that pre-empts the Geor-

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Because we resolve the question of preemption in the present case on the basis of the California statute's reference to and connection with ERISA plans, we do not consider the additional grounds on which the Fifth Circuit determined preemption in *Terotechnology*.

gia antigarnishment exception.") (citation omitted). Normally, a statute that explicitly refers to ERISA plans will also "single out" such plans for special treatment, and therefore will be pre-empted by ERISA, but this result is not necessarily so.

The majority errs by not viewing section 3111 in the context of California's general mechanic's lien laws. California creates mechanic's liens in favor of "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . ." Cal. Civ. Code § 3110. Section 3111 provides the same lien to employee benefit trust funds for unpaid employer contributions. California thus does not single out ERISA plans for special treatment, but gives ERISA plans the same procedure to recover unpaid employer contributions as California gives to employees who are not members of ERISA plans.

Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opinion is that employees who are not members of ERISA plans may use mechanic's liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not. This turns the logic of *Mackey* on its head. *Mackey* precludes state laws that single out ERISA plans; it does not prohibit even-handed state-law enforcement procedures.

In many instances, the mechanic's lien may be the only way for an ERISA plan to protect fully the interests of its employee beneficiaries. The majority places employee benefits unnecessarily at risk by eliminating this important state-law enforcement measure. *See Mackey*, 486 U.S. at 834 ("state-law methods for collecting money

judgments must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment"). Because I believe ERISA does not preclude an ERISA plan from using the mechanic's lien provisions provided by California statute, I respectfully dissent.